

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
NORTHERN DIVISION

<p>EDIZONE, LC, Plaintiff, v. CLOUD NINE, LLC, et al., Defendants.</p>	<p>MEMORANDUM DECISION AND ORDER GRANTING PLAINTIFF’S MOTION TO DISMISS VOLUNTARILY WITH PREJUDICE OF SELECTED CLAIMS AGAINST DEFENDANTS CLOUD NINE, EASY SEAT, RODNEY FORD, AND BLAINE FORD</p> <p>Case No. 1:04-CV-117 TS</p>
<p>CLOUD NINE, LLC, et al., Counter-Claim Plaintiffs, and Third-Party Plaintiffs, v. EDIZONE, LC, Counter-Claim Defendant, and TERRY PEARCE, et al., Third-Party Defendants.</p>	

Pursuant to Fed. R. Civ. P. 41(a)(2), Plaintiff has filed a Motion to Dismiss Voluntarily with Prejudice (“Plaintiff’s Motion”) its Fifth Cause of Action (Federal Trademark Infringement and False Designation of Origin) as against Defendants Cloud Nine and Easy Seat, and its

Seventh Cause of Action (Deceptive Trade Practices) as against Cloud Nine, Easy Seat, Rodney Ford and Blaine Ford.¹

Defendants oppose this motion, stating that Plaintiff improperly seeks to dismiss only those defendants who are covered by insurance, namely, the suppliers of allegedly infringing products (“Supplier Defendants”), in an attempt to force a settlement with the remaining uninsured defendants, resellers of allegedly infringing products (“Reseller Defendants”).² Also, Defendants point out that granting Plaintiff’s Motion may adversely affect the outcome of a separate pending case (“the Insurance Case”) in which Defendants seek declaratory judgment as to their insurer’s coverage liability for the causes of action in this case.³

Under Fed. R. Civ. P. 41(a)(2) a district court has discretion “to dismiss an action . . . upon such terms and conditions as the court deems proper.”⁴ “[A]bsent legal prejudice to the defendant, the district court normally should grant such a dismissal.”⁵ “[P]rejudice is a function of . . . practical factors including: ‘[1] the opposing party’s effort and expense in preparing for trial; [2] excessive delay and lack of diligence on the part of the movant; [3]

¹Docket No. 337.

²Docket No. 350.

³*Id.* at 7; Case No. 1:05-CV-88 TC.

⁴*Brown v. Baeke*, 413 F.3d 1121, 1123 (10th Cir. 2005) (quotation and citation omitted).

⁵*Id.* (quotation and citation omitted).

insufficient explanation of the need for a dismissal; and [4] the present stage of the litigation.”⁶ The Court addresses these factors in turn.

First, as to expense in preparing for trial, Defendants cite *Brown v. Baike*⁷ for the proposition that a defendant’s ability to seek reimbursement is a key consideration as to this factor.⁸ Defendants then argue that dismissing claims against the Supplier Defendants may prevent Reseller Defendants from seeking reimbursement from Supplier Defendants’ insurance coverage.⁹ Defendants also assert that, in the event Reseller Defendants are held liable, and Supplier Defendants are required to indemnify, the latter may have lost their insurance coverage in the Insurance Case.¹⁰

As a preliminary matter, the Court notes that a defendant’s ability to seek reimbursement is not necessarily a factor of expense in preparing for trial. In *Brown*, reimbursement became a factor in a dismissal without prejudice because of concerns that the defendant would incur duplicative expenses upon the plaintiff’s refiling of the case.¹¹ Here, however, Plaintiff moves to dismiss claims with prejudice, and there is no concern that the claims will be re-adjudicated in the future.

⁶*Id.* (quoting *Ohlander v. Larson*, 114 F.3d 1531, 1537 (10th Cir. 1997)).

⁷413 F.3d 1121 (10th Cir. 2005).

⁸Docket No. 350, at 6-7.

⁹*Id.*

¹⁰*Id.* at 7-8.

¹¹*Brown*, 413 F.3d at 1123, 1126.

More importantly, Defendants' ability to be reimbursed post-trial from its insurance coverage is entirely unrelated to determining whether granting Plaintiff's Motion would be unfair in light of the expenses Defendants have incurred as a result of trial preparation. This is especially true when, as here, Plaintiff moves to dismiss claims with prejudice, and Defendants are not faced with the possibility of relitigating Plaintiff's claims. Even if there were some connection between reimbursement and expenses incurred, Defendants have failed to demonstrate that insurance coverage would fail if Plaintiff's Motion is granted. Therefore, in the absence of other supporting evidence, the factor of "expense in preparing for trial" weighs in favor of dismissal.

Second, with respect to excessive delay and lack of diligence on the part of the movant, Defendants either fail to make any relevant arguments or confuse this factor with the fourth factor.¹² Because there is no indication that Plaintiff has delayed this litigation or acted without diligence, this factor also weighs in favor of dismissal.

Third, Defendants, pointing to warranty against infringement and contributory infringement causes of action, assert that, in seeking to dismiss Supplier Defendants, Plaintiff's Motion "does not make sense."¹³ More specifically, Defendants assert that these causes of action usually result in the primary liability of suppliers.¹⁴ Defendants assert that Plaintiff's true motivation in seeking dismissal is to obtain an unfair tactical advantage by

¹²See Docket No. 350, at 6.

¹³*Id.* at 1.

¹⁴*Id.* at 2-4.

dismissing only insured defendants.¹⁵ Plaintiff, on the other hand, argues that the need for dismissal relates to its failure to find sufficient evidence in discovery to maintain the causes of action and defendants related to the motion.¹⁶

This Court is satisfied with Plaintiff's explanation. Plaintiff concedes that the evidence does not support warranty against infringement or contributory infringement causes of action against the defendants which relate to this Motion, and further points out that no such causes of action are pleaded against the defendants in Plaintiff's Motion.¹⁷ Importantly, Defendants themselves concede that Plaintiffs are correct in asserting that the evidence does not support the claims which form the basis for Plaintiff's Motion.¹⁸ Moreover, that Plaintiff may gain some incidental tactical advantage is no bar to the Court's granting Plaintiff's Motion.¹⁹ Accordingly, this factor also weighs in favor of dismissal.

Finally, Defendant argues that because dispositive motions were due on May 15, 2006, and because discovery is substantially complete, Plaintiff's Motion should not be granted at this stage in the litigation.²⁰ Plaintiff's argue that there are still several months until the

¹⁵*Id.* at 4-6.

¹⁶Docket Nos. 337, 352.

¹⁷Docket No. 352, at 3-4.

¹⁸Docket No. 350, at 2.

¹⁹*See, e.g., Manshack v. Southwestern Elec. Power Co.*, 915 F.2d 172, 174 (5th Cir. 1990) (citing 9 C. Wright & Miller, *Federal Practice and Procedure* § 2364, at 165 (1971)).

²⁰Docket No. 350, at 6.

January 8, 2007 trial date.²¹ Because hearing for various summary judgment motions is set for October 23, 2006,²² and because discovery is substantially complete, this Court finds that the present stage of litigation factor weighs against dismissal.

Nevertheless, after viewing the appropriate factors in their entirety, this Court determines that there is no legal prejudice to Defendants in granting Plaintiff's Motion. It is therefore

ORDERED that Plaintiff's Motion to Dismiss Voluntarily with Prejudice of Selected Claims Against Defendants Cloud Nine, Easy Seat, Rodney Ford, and Blaine Ford (Docket No. 337) is GRANTED.

DATED September 18, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Stewart", is written over a horizontal line.

TED STEWART
United States District Court Judge

²¹Docket No. 352, at 8-9.

²²Docket No. 322.

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Jonathan A. Dibble (0881)
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FILED
U.S. DISTRICT COURT

2006 SEP 18 P 1:34

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

Attorneys for Plaintiff David Whitney Minerals, Inc.

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Attorneys for Defendant TL Crowther, LLC.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, NORTHERN DIVISION

DAVID WHITNEY MINERALS, INC.,

Plaintiff,

v.

TL CROWTHER, LLC.

Defendant.

ORDER GRANTING PLAINTIFF'S MOTION
FOR AN EXTENSION OF TIME

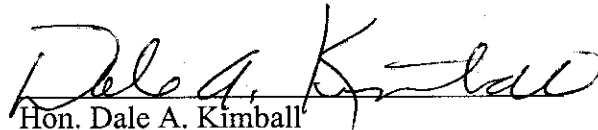
Civil No. 1:05CV00089 DAK

Judge Dale A. Kimball

Based upon the stipulation of Plaintiff David Whitney Minerals, Inc. and Defendant TL Crowther, LLC, Plaintiff shall have until October 5, 2006, to file a reply memorandum in response to Defendant's objection to Plaintiff's motion for summary judgment.

DATED this 18th day of September, 2006.

BY THE COURT:


Hon. Dale A. Kimball
U.S. District Court Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
Northern Division for the District of Utah

Ogden City Redevelopment Agency,

Plaintiff,

vs.

Ontario Specialty Contracting,
Lumbermans Mutual Casualty
Company,

Defendant.

**SCHEDULING ORDER AND
ORDER VACATING HEARING**

Case No. 1:06CV53PGC

District Judge Paul G. Cassell

Magistrate Judge

Pursuant to Fed. R. Civ. P. 16(b), the Magistrate Judge¹ received the Attorneys' Planning Report filed by counsel. The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

IT IS ORDERED that the Initial Pretrial Hearing set for 10/8/06, at 2:30 p.m. is VACATED.

****ALL TIMES 4:30 PM UNLESS INDICATED****

- | | | |
|-----------|---|----------------------|
| 1. | PRELIMINARY MATTERS | <u>DATE</u> |
| | Nature of claim(s) and any affirmative defenses: | |
| | a. Was Rule 26(f)(1) Conference held? | <u>Yes</u> |
| | b. Has Attorney Planning Meeting Form been submitted? | <u>Yes</u> |
| | c. Was 26(a)(1) initial disclosure completed? | <u>10/2/06</u> |
|
 | | |
| 2. | DISCOVERY LIMITATIONS | <u>NUMBER</u> |
| | a. Maximum Number of Depositions by Plaintiff(s) | <u>15</u> |
| | b. Maximum Number of Depositions by Defendant(s) | <u>15</u> |
| | c. Maximum Number of Hours for Each Deposition
(unless extended by agreement of parties) | <u>7</u> |

d.	Maximum Interrogatories by any Party to any Party	<u>35</u>
e.	Maximum requests for admissions by any Party to any Party	<u>20</u>
f.	Maximum requests for production by any Party to any Party	
		<u>DATE</u>
3.	AMENDMENT OF PLEADINGS/ADDING PARTIES²	
a.	Last Day to File Motion to Amend Pleadings	<u>3/31/07</u>
b.	Last Day to File Motion to Add Parties	<u>3/31/07</u>
4.	RULE 26(a)(2) REPORTS FROM EXPERTS³	
a.	Plaintiff	<u>5/1/07</u>
b.	Defendant	<u>6/1/07</u>
c.	Counter Reports	<u>6/15/07</u>
5.	OTHER DEADLINES	
a.	Discovery to be completed by:	
	Fact discovery	<u>5/30/07</u>
	Expert discovery	<u>7/15/07</u>
b.	<i>(optional)</i> Final date for supplementation of disclosures and discovery under Rule 26 (e)	<u>5/30/07</u>
c.	Deadline for filing dispositive or potentially dispositive motions	<u>8/31/07</u>
6.	SETTLEMENT/ ALTERNATIVE DISPUTE RESOLUTION	
a.	Referral to Court-Annexed Mediation	<u>N</u>
b.	Referral to Court-Annexed Arbitration	<u>N</u>
c.	Evaluate case for Settlement/ADR on	<u>5/30/07</u>
d.	Settlement probability:	
7.	TRIAL AND PREPARATION FOR TRIAL:	
a.	Rule 26(a)(3) Pretrial Disclosures ⁴	
	Plaintiffs	12/7/07

Defendants

12/21/07

- b. Objections to Rule 26(a)(3) Disclosures**
(if different than 14 days provided in Rule)

DATE

- c. Special Attorney Conference⁵ on or before**

1/7/08

- d. Settlement Conference⁶ on or before**

- e. Final Pretrial Conference**

3:00 pm

1/22/08

- f. Trial**

Length

Time

Date

- i. Bench Trial**

- ii. Jury Trial**

5

8:00 am

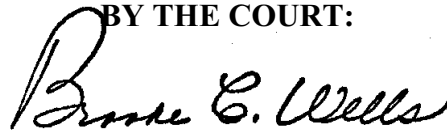
2/4/08

8. OTHER MATTERS:

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

Dated this 18 day of September, 2006.

BY THE COURT:



Brooke C. Wells
U.S. Magistrate Judge

1. The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately referred to that Magistrate Judge. A separate order may refer this case to a Magistrate Judge under DUCivR 72-2 (b) and 28 USC 636 (b)(1)(A) or DUCivR 72-2 (c) and 28 USC 636 (b)(1)(B). The name of any Magistrate Judge to whom the matter is referred under DUCivR 72-2 (b) or (c) should appear on the caption as required under DUCivR10-1(a).

2. Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).

3. A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.

4. Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.

5. The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.

6. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

S:\IPT\2006\Ogden City Redevelopment v Ontario Specialty Contracting 1 06 cv 53 PGC alp.wpd

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

vs.

CHRISTOPHER JAMES CHESNUT,
Defendant.

ORDER DIRECTING BRIEFING

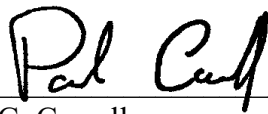
Case No. 1:06-CV-00106 PGC

The court directs the United States to respond to the defendant's motion for relief under 28 U.S.C. § 2255. The responsive briefing must be filed by **October 20, 2006**.

SO ORDERED.

DATED this 15th day of September, 2006.

BY THE COURT:



Paul G. Cassell
United States District Judge

SEP 18 2006

MARKUS B. ZIMMER, CLERK
BY DEPUTY CLERK

Alan L. Sullivan (3152)
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Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR DISTRICT OF UTAH CENTRAL DIVISION**

UNIVERSITY OF UTAH, et. al,

Plaintiffs,

vs.

MARK L. SHURTLEFF,

Defendant.

~~PROPOSED~~
**ORDER GRANTING JOINT MOTION TO
ADMINISTRATIVELY RE-OPEN CASE
AND STAY PROCEEDINGS**

Case No. 2:02CV-0212K

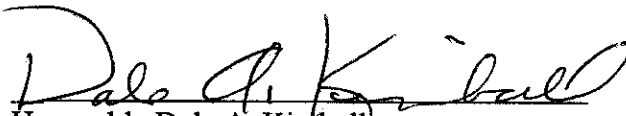
Honorable Dale A. Kimball

Based on the stipulation and joint motion of the parties and for good cause appearing,
IT IS HEREBY ORDERED that this case is administratively reopened;
IT IS FURTHER ORDERED that all claims are hereby stayed until March 31, 2007; and
IT IS FURTHER ORDERED that, in light of the fact that the University of Utah (the
"University") desires to maintain a weapon-free campus, the University's temporary agreement
to suspend enforcement of its Internal Firearms Policy and modify its practices to comply with
state law pending settlement of the dispute by the parties or a decision on the federal
constitutional issues by this Court does not affect any of the University's rights, including the

right to pursue its federal claims.

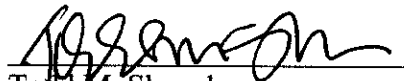
DATED this 18th day of September, 2006.

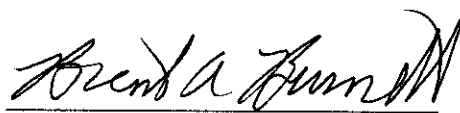
BY THE COURT


Honorable Dale A. Kimball
United States District Court Judge

Submitted by:

Snell & Wilmer L.L.P.


Todd M. Shaughnessy
Attorney for Plaintiff


Brent A. Burnett
Attorney for Defendant

MINUTES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

JUDGE: Honorable David Sam

COURT REPORTER: None

COURTROOM DEPUTY: None

INTERPRETER: N/A

DATE: Sept. 15, 2006, 10:30 a.m.

CASE NO. 2:03cv00410 DS

Johnson Matthey, Inc., v. Beltran Associates et al.,

Approved By: 09/15/06

APPEARANCE OF COUNSEL

Pla Jay D. Harker.
Dft Howard W. Burns, Jr.,
G. Troy Parkinson

MATTER SET: Pending Motions

DOCKET ENTRY:

At appointed time, Court conducted telephone conf. with counsel re: pending motions. After discussion, Court denied Plaintiff's Motion for Protective Order Re: Beltran's FRCP 30(b)(6) Deposition Notice etc. (Doc. # 171), denied Defendants' Motion to Compel Production of Dave McKelvie for Deposition (Doc. # 175), and instructed counsel with regard to Motion for Order to Show Cause (Doc. # 178) to submit complete proposed order to show cause for Court's signature, or to contact criminal defense counsel directly to see if deposition appearance can be arranged.

MINUTES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

JUDGE: Honorable David Sam

COURT REPORTER: None

COURTROOM DEPUTY: None

INTERPRETER: N/A

DATE: Sept. 15, 2006, 10:30 a.m.

CASE NO. 2:03cv00410 DS

Johnson Matthey, Inc., v. Beltran Associates et al.,

Approved By: 09/15/06

APPEARANCE OF COUNSEL

Pla Jay D. Harker.
Dft Howard W. Burns, Jr.,
G. Troy Parkinson

MATTER SET: Pending Motions

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MINUTES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

JUDGE: Honorable David Sam

COURT REPORTER: None

COURTROOM DEPUTY: None

INTERPRETER: N/A

DATE: Sept. 15, 2006, 10:30 a.m.

CASE NO. 2:03cv00410 DS

Johnson Matthey, Inc., v. Beltran Associates et al.,

Approved By: 09/15/06

APPEARANCE OF COUNSEL

Pla Jay D. Harker.
Dft Howard W. Burns, Jr.,
G. Troy Parkinson

MATTER SET: Pending Motions

DOCKET ENTRY:

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FILED
U.S. DISTRICT COURT
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SEP 15 2006
OFFICE OF U.S. DISTRICT JUDGE
BRUCE S. JENKINS

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA

Plaintiff,

v.

\$2,880.00 U. S. Currency, et al.,

Defendants.

Case # 2:04CV00888

ORDER TO CONTINUE TRIAL

JUDGE Bruce S. Jenkins

On September 14, 2006, a status conference was held in reference to the trial set for September 18, 2006. Plaintiff was represented by Richard W. Daynes. Claimant's counsel was represented by Peter Goodall. Prosecutor Vernon Stejskal in the criminal case *U.S. v. Mark Wayne Cruz, et al.*, 1:04CR00059 DB, was also present. The defendant's counsel in the criminal case, Ronald Yengich is out of town. The Court having been fully briefed and advised of the matter set forth before this Court, and good cause appearing:

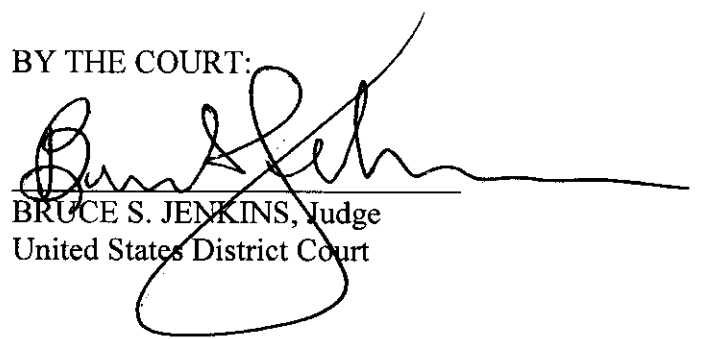
IT IS ORDERED that the one day trial date of September 18, 2006, is stricken.

IT IS FURTHER ORDERED that a pretrial conference be set for November 2, 2006, at 9:30 am. The parties are required to be prepared to discuss the theory of the case, the law, the witnesses and exhibit lists for this case.

IT IS FURTHER ORDERED that the parties submit to the Court an agreed upon Pretrial
stating disputed issues, for cases in chief
Order, their witness list, and their exhibit lists by October 30, 2006.

SO ORDERED this 15 day of September, 2006.

BY THE COURT:



BRUCE S. JENKINS, Judge
United States District Court

UNITED STATES DISTRICT COURT

Central

District of

Utah

UNITED STATES OF AMERICA SEP 18 A 11: 39 JUDGMENT IN A CRIMINAL CASE

V.

Susan M. Titus

DISTRICT OF UTAH

Case Number: DUTX205CR000252-001

USM Number: 12526-081

Michael Jaenish

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1s, 3s, and 5s of the Indictment.

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U. S. C. § 371	Conspiracy		1s
18 U.S.C. § 1344	Bank Fraud		3s
18 U.S.C. § 1028A	Aggravated Identity Theft		5s

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☒ Count(s) 2s, 4s, 6s thru 15s ☐ is ☒ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

9/15/2006

Date of Imposition of Judgment

Signature of Judge

Dale A. Kimball

U.S. District Judge

Name of Judge

Title of Judge

Date

September 18, 2006

DEFENDANT: Susan M. Titus
CASE NUMBER: DUTX205CR000252-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

19 months as to counts 1s and 3s; 24 months as to count 5s, to run consecutively for a total of 43 months.

☒ The court makes the following recommendations to the Bureau of Prisons:

That the defendant be incarcerated at FCI Sheridan Oregon to facilitate family visitation and that she have the benefit of RDAP.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Susan M. Titus
CASE NUMBER: DUTX205CR000252-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

60 months.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Susan M. Titus
CASE NUMBER: DUTX205CR000252-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant is to inform any employer or prospective employer of her current conviction and supervision status.
2. The defendant shall refrain from incurring new credit charges or opening additional lines of credit unless she is in compliance with any established payment schedule and obtains the approval of the U. S. Probation Office.
3. The defendant shall provide the U. S. Probation Office access to all requested financial information.
4. The defendant will submit to drug/alcohol testing as directed by the U. S. Probation Office and pay a one-time \$115 fee to partially defray the costs of collection and testing. If testing reveals illegal drug use or excessive and/or illegal consumption of alcohol such as alcohol-related criminal or traffic offenses, the defendant shall participate in drug and/or alcohol abuse treatment under a copayment plan as directed by the U. S. Probation Office and shall not possess or consume alcohol during the course of treatment.
5. The defendant shall submit her person, residence, office, or vehicle to a search, conducted by the U. S. Probation Office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
6. The defendant shall not have any direct or indirect contact with any codefendants or victims in this case during any period of supervision or incarceration.

DEFENDANT: Susan M. Titus
CASE NUMBER: DUTX205CR000252-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 300.00	\$	\$ 39,007.68

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☒ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
American Express P. O. Box 36002, Ft. Lauderdale, FL 33336-0002	\$5,441.34	\$5,441.34	
T. Row Price P. O. Box 17303, Baltimore, MD 21297-1320	\$25,000.00	\$25,000.00	
CITI Financial 199 West 500 West, Bountiful, UT 84010	\$7,500.11	\$7,500.11	
Trans West Credit Union 37 W. 1700 S., P.O. Box 65218, Salt Lake City, UT	\$1,066.23	\$1,066.23	
TOTALS	\$ 39,007.68	\$ 39,007.68	

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☒ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☒ the interest requirement is waived for the ☐ fine ☒ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Susan M. Titus
CASE NUMBER: DUTX205CR000252-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☐ Lump sum payment of \$ _____ due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal monthly (e.g., weekly, monthly, quarterly) installments of \$ 300.00 over a period of _____ (e.g., months or years), to commence 30 (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
The Special Assessment Fee of \$300 is due immediately. The restitution shall be paid at a minimum payment of \$300 per month upon release from confinement.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10

are the

Statement of Reasons,
which will be docketed
separately as a sealed
document

UNITED STATES DISTRICT COURT

Central

FILED
U.S. DISTRICT COURT
District of

FILED
U.S. DISTRICT COURT
Utah

UNITED STATES OF AMERICA 2006 SEP 18 JUDGMENT IN A CRIMINAL CASE A 11:39

V.

Daniel Araujo-Valenzuela

DISTRICT OF UTAH

Case Number: DUTX205CR000310-002

BY: DEPUTY CLERK

USM Number: 12575-081

BY: DEPUTY CLERK

Carlos Garcia

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of the Indictment.

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. §841(a)(1)	Possession of Methamphetamine with Intent to Distribute		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☒ Count(s) 2, 4, 6 ☒ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

9/14/2006

Date of Imposition of Judgment

Signature of Judge

Dale A. Kimball

Name of Judge

U.S. District Judge

Title of Judge

Date

September 18, 2006

DEFENDANT: Daniel Araujo-Valenzuela
CASE NUMBER: DUTX205CR000310-002

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

46 months.

☒ The court makes the following recommendations to the Bureau of Prisons:

That the defendant be sent to a facility in southern California to facilitate family visitation.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Daniel Araujo-Valenzuela
CASE NUMBER: DUTX205CR000310-002

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

60 months.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Daniel Araujo-Valenzuela
CASE NUMBER: DUTX205CR000310-002

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall not illegally re-enter the USA. If the defendant returns to the USA during the period of supervision, he is instructed to contact the U. S. Probation Office in the District of Utah within 72 hours of arrival in the USA.

DEFENDANT: Daniel Araujo-Valenzuela
CASE NUMBER: DUTX205CR000310-002

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	--------------------	----------------------------	-------------------------------

TOTALS	\$ <u>0.00</u>	\$ <u>0.00</u>
--------	----------------	----------------

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Daniel Araujo-Valenzuela
CASE NUMBER: DUTX205CR000310-002

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- ☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10

are the

Statement of Reasons,
which will be docketed
separately as a sealed
document

Pursuant to Title 18, § 3161(8)(A) and (B)(iv) of the Speedy Trial Act, the Jury Trial date in this matter, currently set for October 11th, 2006, is hereby continued. The period of delay resulting from this continuance is hereby ordered excludable pursuant to the Act.

IT IS FURTHER ORDERED that the Jury Trial be continued to the 17th day of January, 2007 at the hour of 8:30 a.m/~~p.m.~~, before Judge Kimball.

SIGNED BY MY HAND this 15th day of September, 2006.

BY THE COURT:


HONORABLE DALE A. KIMBALL
United States District Court Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

DELMAR LAKE,

Defendant.

ORDER

Case No. 2:05CR443DAK

This matter is before the court on the United States' Request for Inquiry into Potential Conflict of Interest. The court held a hearing on this matter on August 28, 2006. At the hearing, the court allowed counsel for Defendant to file a written response to the government's position and allowed counsel for the government witnesses who were potentially involved in the conflict to provide written statements with respect to their clients. Defendant and Nicholas Galanis have filed responses. Based on the materials submitted by the parties, the arguments made at the hearing on the matter, and the law and facts relevant to the present matter, the court enters the following Order.

Defendant Lake's defense counsel, Frank Berardi, has represented Nicholas Galanis, one of the government's witnesses in this case, in a civil case in state court since May of 2005. One month later, in June of 2005, Defendant Lake was indicted in the present case. In September of 2005, Galanis became a cooperating witness in Lake's case. Galanis was offered sentencing

concessions in his own separate criminal case pending before Judge Cassell for his cooperation as a witness in Lake's case. In October of 2005, Berardi entered an appearance of counsel for Lake in this case.

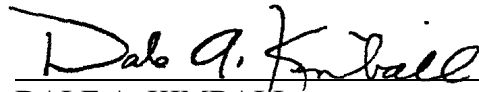
During discovery in this matter, Berardi was provided a report of the government's debriefing of Galanis. At some point prior to the scheduled trial in this matter, Berardi met with Galanis, discussed the issues in Lake's case, and prepared an affidavit favorable to Lake for Galanis' signature. The affidavit was presented to the government and the court. Berardi met with Galanis and prepared the affidavit for him without notifying Galanis' criminal defense counsel, David Finlayson.

The court concludes that defense counsel, Frank Berardi, is disqualified from representation of Defendant Delmar Lake in the present case. Berardi has violated Rule 1.7 of the Utah Rules of Professional Conduct by representing clients with a concurrent conflict of interest. Berardi has also violated Rule 4.2 of the Utah Rules of Professional Conduct by failing to notify Galanis' defense counsel prior to discussion of the Lake case with Galanis and prior to the preparation of an affidavit that has consequences in Galanis' own criminal case. Berardi's simultaneous representation of Galanis and Lake resulted in an affidavit that works against Galanis' interest in his separate criminal case before Judge Cassell. There is also a significant risk in this case that Berardi's representation of Lake would be materially limited by Berardi's responsibilities to Galanis and Jeff Alsop, another government witness in this case, based on Berardi's present and prior representations of those individuals.

Accordingly, the court finds that a conflict of interest exists and that Berardi cannot continue as defense counsel. Because Defendant has indicated to the court that he does not have

the ability to pay counsel, Defendant shall appear before Magistrate Judge Alba for appointment of new counsel.

DATED this 18th day of September, 2006.

A handwritten signature in black ink, reading "Dale A. Kimball", is written over a horizontal line.

DALE A. KIMBALL
United States District Judge

**In the United States District Court
for the District of Utah, Central Division**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DANIEL C. GRANT,

Defendant.

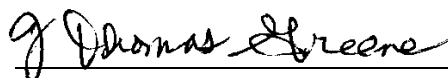
ORDER OF DISMISSAL

Case No. 2:05CR564

After oral argument by counsel for defendant and the government, it is hereby
ORDERED, that the Allegation of Violation of Conditions of Supervised Release
is DISMISSED; it is

FURTHER ORDERED, that defendant Daniel C. Grant is released from federal
custody.

DATED this 18th day of September, 2006.



J. THOMAS GREENE
UNITED STATES DISTRICT JUDGE

D. GILBERT ATHAY (0143)
Lawyer for Defendant
43 East 400 South
Salt Lake City, Utah 84111
Telephone: (801) 363-7074

FILED
U.S. DISTRICT COURT
2006 SEP 15 P 5:10

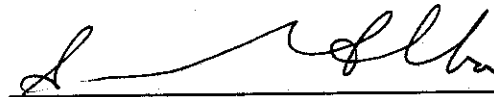
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH CENTRAL DIVISION

UNITED STATES OF AMERICA,	:	
	:	ORDER PERMITTING
Plaintiff,	:	INTERSTATE TRAVEL
	:	
vs.	:	
	:	
BASSAM OMAR,	:	Case No. 2:05CR00772
	:	
Defendant.	:	Judge Todd Campbell
	:	Magistrate Judge Samuel Alba

Based upon the motion of the defendant, Bassam Omar, through his lawyer, D. Gilbert Athay, stipulation of Robert Lunnan, Assistant United States Attorney and good cause appearing, it is hereby

ORDERED that the defendant, Mr. Bassam Omar be allowed to travel from San Diego, California to Raleigh, North Carolina September 14-17, 2006.

DATED this 18th day of September, 2006.



Judge Samuel Alba
United States District Court

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

FILED
U.S. DISTRICT COURT
2006 SEP 15 P 5:10

UNITED STATES OF AMERICA,

2:05CR00891TC

Plaintiff,

vs.

RAFAEL VILLEGAS,

Defendant.

ORDER EXCLUDING TIME
UNDER SPEEDY TRIAL ACT

Magistrate Judge Alba

The defendant appeared before the Court on September 13, 2006, regarding his motion to have new counsel. Defendant had previously advised the Court that his family had retained Bel-Ami de Montreux; Mr. de Montreux appeared and advised that Court that he had not yet been retained, but would agree to be appointed in this matter because he had represented defendant in this same matter in state court. Mr. de Montreux requested time from the Court to resolve this matter, and consequently, no trial date was set.

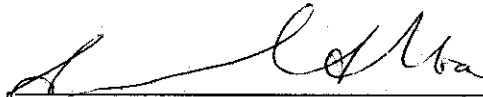
Based on the foregoing, and for good cause appearing,

IT IS HEREBY ORDERED that the time between September 13, 2006, and the new trial date, when set, is excluded under 18 U.S.C. § 3161(h)(8)(A) and (B)(iv) of the Speedy Trial Act because the ends of justice in excluding the time outweigh the best interest of the public and the defendant in a speedy trial.

This is based on the Court's finding that failure to grant the continuance and exclusion would deny the Mr. De Montreux reasonable time for effective preparation, taking into account the exercise of due diligence.

DATED this 14th day of September, 2006.

BY THE COURT:

A handwritten signature in cursive script, appearing to read 'S. Alba', is written over a horizontal line.

SAMUEL ALBA
U.S. Magistrate Judge

MINUTES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

JUDGE: Hon. J. Thomas Greene


COURT REPORTER: Dawn Brunner-Hahn

COURTROOM DEPUTY: Michael R. Weiler

INTERPRETER: None

CASE NO. 5-CR-906 JTG

USA v. Nickilynn Avery

Approved By: 

APPEARANCE OF COUNSEL

Pla Michael P. Kennedy, AUSA

Dft A. Chelsea Koch, FPD

DATE: September 13, 2006, 1:18 PM

MATTER SET: Status Report & Scheduling Conference

(7 mins)

DOCKET ENTRY:

Dft pres. Ms. Koch informs Crt that matter will likely resolve with change of plea. Crt schedules:

- COP hearing set 9/25/2006, at 10:00 AM.

Dft to remain on conditions of release.

FILED
U.S. DISTRICT COURT

2006 SEP 15 P 4:24

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION
BY: DEPUTY CLERK

WADE CHRISTENSEN,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA, :
FORSGREN ASSOCIATES, INC., :
JAY DIGS, INC., and JOHN DOES 1-5, :

Defendants.

Case No. 2:05CV 00055 DAK

AMENDED SCHEDULING ORDER

Honorable Dale A. Kimball

Based upon the Stipulated Motion for Modification of Scheduling Order, and good cause appearing,

IT IS HEREBY ORDERED that the Scheduling Order of February 6, 2006 in the above matter be modified as follows:

1. Discovery cutoff for liability experts will be September 22, 2006.
2. Dispositive motions on liability issues will be filed by October 31, 2006.
3. The current trial setting beginning on February 26, 2007 is stricken.
4. If the case is not concluded by motions on liability issues, the Court will hold a scheduling conference to set deadlines for discovery regarding damages and medical issues and to set a new trial date.

DATED this 13th day of September, 2006.

BY THE COURT:


HONORABLE DALE A. KIMBALL
United States District Court Judge

APPROVED AS TO FORM:

DATED this 11th day of September, 2006.

BRETT L. TOLMAN
United States Attorney

/s/ Jeannette F. Swent

JEANNETTE F. SWENT
Assistant United States Attorney
Attorneys for United States of America

DATED this 11th day of September, 2006.

EISENBERG, GILCHRIST & MORTON

/s/ Jacquelynn D. Carmichael

/s/ Jeannette F. Swent

JACQUELYNN D. CARMICHAEL
Attorneys for Plaintiff
*(Signed copy of document bearing signature of
Jacquelynn D. Carmichael is being maintained
in the United States Attorney's Office)*

DATED this 11 day of September, 2006.

RICHARDS, BRANDT, MILLER & NELSON

/s/ Lincoln Harris

/s/ Jeannette F. Swent

LINCOLN HARRIS

Attorneys for Defendant Forsgren Associates, Inc.

*(Signed copy of document bearing signature of
Lincoln Harris is being maintained
in the United States Attorney's Office)*

DATED this 11 day of September, 2006.

MORGAN, MINNOCK, RICE & JAMES

/s/ Joseph E. Minnock

/s/ Jeannette F. Swent

JOSEPH E. MINNOCK

Attorneys for Defendant Jay Digs, Inc.

*(Signed copy of document bearing signature of
Joseph E. Minnock is being maintained
in the United States Attorney's Office)*

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

HANSEN,

Plaintiff,

vs.

INVST LENDING, et al.,

Defendants.

TRIAL ORDER

Case No. 2:05CV171DAK

This case is set for a jury trial to begin on October 3, 2006, at 8:30 a.m. The final pre-trial hearing is set for September 26, 2006, at 3:00 p.m. At that hearing, the parties shall notify the court of the expected length of the trial and the effect, if any, on this trial as a result of the trial in *Black v. Investment Lending, et al.*, 2:05cv170DS. In order to expedite the conduct of the trial in this case, counsel are instructed as follows:

A. Proposed Voir Dire, Jury Instructions, and Special Verdict Form

1. Proposed Voir Dire

The parties must submit any proposed voir dire no later than **September 26, 2006**.

2. Special Verdict Form

The parties must submit a proposed special verdict form no later than **September 26, 2006**. In addition to filing the special verdict form electronically, the parties must email a copy of the special verdict form to utdecf_kimball@utd.uscourts.gov in Word Perfect format. The parties shall meet and attempt to stipulate to the form of the special verdict form. However, any

objection the parties have to the other party's proposed special verdict form shall be filed by **September 29, 2006.**

3. Jury Instructions

(a) *stock instructions*

Upon request, the court will provide the parties with its stock jury instructions for civil cases. The court will give its stock instructions applicable to this case unless both parties agree to modify them and provide convincing arguments for such changes. The parties shall not submit stock instructions that deal with the same subject matter as the court's stock instructions. When submitting their instructions, the parties shall indicate in a list to the court which of the court's stock instructions should be given. The parties need not resubmit the court's stock instructions.

(b) *additional instructions*

All additional jury instructions must be submitted according to the following procedure:

1. The parties shall serve upon the opposing party their proposed jury instructions by **September 22, 2006.** The parties must then meet and confer to agree on a single set of instructions. The parties are required to *jointly submit one set of stipulated final instructions.*
2. If the parties cannot agree upon a complete set of final instructions, they may submit separately those instructions upon which they cannot agree. However, the parties are expected to agree upon the majority of the substantive instructions for the case.

3. The stipulated instructions and each party's supplemental instructions must be electronically filed with the court by **September 26, 2006**. In addition to electronically filing the jury instructions, the parties shall also email a copy of the instructions, *without* citation to authority, to utdecf_kimball@utd.uscourts.gov in Word Perfect format.
4. No later than **noon on September 29, 2006**, each party must file its objections to the supplemental instructions proposed by the other party. All such objections must recite the proposed disputed instruction in its entirety and specifically highlight the objectionable language in the proposed instruction. The objection must contain citations to authority and a concise argument explaining why the instruction is improper. If applicable, the objecting party should submit an alternative instruction addressing the subject or principle of law.
5. No later than **October 2, 2006**, each party may file a reply to the opposing party's objections.

B. Motions in Limine

All motions in limine must be filed by **noon on September 26, 2006**. Memoranda in opposition to any motions in limine must be filed no later than **September 29, 2006**. The court will rule on the motions in limine before the trial begins on the morning of **October 3, 2006**.

C. Trial Exhibits

Pursuant to Local Rule 83-5, each party is required to pre-mark all exhibits intended to be introduced during trial and prepare an exhibit list for the court's use at trial. Exhibit labels (stickers) are available at the Intake Desk in the Clerk's Office. The standard exhibit list form is

available on the Court's website (www.utd.uscourts.gov). Plaintiffs should list their exhibits by consecutive numbers and defendants should list their exhibits by consecutive letters, unless authorized by the Court to use a different system.

Do **NOT** file the exhibit list or the exhibits. The exhibit list is to be provided to the Courtroom Deputy Clerk on the first morning of trial; the exhibits are to remain in the custody of counsel until admitted as evidence by the Court.

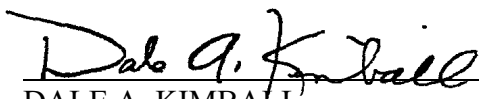
D. Pretrial Disclosures, Pretrial Order, and Attorneys' Conference

This Trial Order does not affect the parties' pre-trial requirements under the Federal Rules of Civil Procedure. The parties shall submit their pretrial order to court no later than **September 28, 2006**. The form of the pretrial order shall conform generally to the approved form in Appendix IV to the district court's Local Rules of Practice. The parties shall also still hold their pre-trial attorneys' conference before the date for submitting the pre-trial order to discuss settlement, a proposed pretrial order, exhibit lists, jury instructions, and other matters that will aid in an expeditious and productive trial.

E. Settlement

In the event that a settlement is reached between the parties, the court should be notified as soon as possible.

DATED this 18th day of September, 2006.



DALE A. KIMBALL
United States District Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

IN RE: iMERGENT, INC. SHAREHOLDER
DERIVATIVE LITIGATION

ORDER DENYING DEFENDANT'S
MOTIONS FOR LEAVE TO FILE
LENGTHY MEMORANDA

Case No. 2:05-CV-279 TS

On August 10, 2006, Defendant's filed two Memoranda in Support of two Motions to Dismiss Plaintiff's Complaint.¹ Both memoranda were overlength. Defendant's also filed, concurrently with and corresponding to their Memoranda in Support of the Motions to Dismiss, Motions for Leave to File Excess Pages.² The Court finds that Defendant has not shown exceptional circumstances that justify the need for an extension of the specified page limitations. It is therefore

¹Docket Nos. 46, 52.


²Docket Nos. 50, 53.

ORDERED that Defendant's Motions for Leave to File Excess Pages (Docket Nos. 50, 53) is DENIED. It is further

ORDERED that Defendant shall have ten (10) days to resubmit their memoranda which comply with DUCiv 7-1(a)(3).

DATED September 18, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Stewart", is written over a horizontal line.

TED STEWART
United States District Judge

Elizabeth M. Peck (6304)
LAW OFFICE OF ELIZABETH M. PECK
422 North 300 West
Salt Lake City, UT 84103
Tel. (801) 521-0844
Fax (801) 521-7725

Co-Counsel for Plaintiff Jerry Price

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

JERRY PRICE, Plaintiff, vs. DETROIT DIESEL, ET AL., Defendants.	ORDER OF DISMISSAL WITH PREJUDICE Civ. No. 2:05CV412 Judge Dale A. Kimball Magistrate David Nuffer
---	--

The Court, for good cause appearing and based upon the parties' Stipulation, hereby
ORDERS dismissal of the action, with prejudice.

DATED this 18th day of September, 2006.

BY THE COURT:



Dale A. Kimball
United States District Court Judge
District of Utah

Approved as to Form:

/S/ (with permission)
Christopher B. Snow
CLYDE SNOW SESSIONS & SWENSON
Counsel for Defendants

FILED
U.S. DISTRICT COURT
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2006 SEP 18 P 12:06

IN THE UNITED STATES DISTRICT COURT SEP 07 2006

DISTRICT OF UTAH

FOR THE DISTRICT OF UTAH CENTRAL DIVISION OFFICE OF

JUDGE TENA CAMPBELL

CLERK

Taylor R. Gosman, et al.,

**THIRD AMENDED
SCHEDULING ORDER**

Plaintiffs,

Case No. 2:05-CV-00529 TC

vs.

District Judge Tena Campbell

C.R. England, Inc., et al.,

Defendants.

Based on the stipulated motion of the parties and for good cause shown, IT IS ORDERED
that all previous scheduling orders are amended as follows:

1. PRELIMINARY MATTERS

DATE

Nature of claim(s) and any affirmative defenses:

- | | | |
|----|--|------------|
| a. | Was Rule 26(f)(1) Conference held? | <u>Yes</u> |
| b. | Has Attorney Planning Meeting Form been submitted? | <u>Yes</u> |
| c. | Was 26(a)(1) initial disclosure completed? | <u>Yes</u> |

2. DISCOVERY LIMITATIONS

NUMBER

- | | | |
|----|--|-----------|
| a. | Maximum Number of Depositions by Plaintiff(s) | <u>10</u> |
| b. | Maximum Number of Depositions by Defendant(s) | <u>10</u> |
| c. | Maximum Number of Hours for Each Deposition
(unless extended by agreement of parties) | <u>7</u> |
| d. | Maximum Interrogatories by any Party to any Party | <u>25</u> |
| e. | Maximum requests for admissions by any Party to any Party | <u>25</u> |
| f. | Maximum requests for production by any Party to any Party | <u>25</u> |

- | | <u>DATE</u> |
|--|--------------------|
| 3. AMENDMENT OF PLEADINGS/ADDING PARTIES | |
| a. Last Day to File Motion to Amend Pleadings | <u>9/29/06</u> |
| b. Last Day to File Motion to Add Parties | <u>9/29/06</u> |
| 4. RULE 26(a) DESIGNATION OF AND REPORTS FROM EXPERTS | |
| a. Plaintiff | <u>1/31/07</u> |
| b. Defendant | <u>3/30/07</u> |
| c. Counter reports | <u>4/30/07</u> |
| 5. OTHER DEADLINES | |
| a. Discovery to be completed by: | |
| Fact discovery | <u>12/29/06</u> |
| Expert discovery | <u>5/15/07</u> |
| b. (optional) Final date for supplementation of disclosures and discovery under Rule 26 (e) | |
| c. Deadline for filing dispositive or potentially dispositive motions | <u>5/15/07</u> |
| 6. SETTLEMENT/ ALTERNATIVE DISPUTE RESOLUTION | |
| a. Referral to Court-Annexed Mediation | <u>No</u> |
| b. Referral to Court-Annexed Arbitration | <u>No</u> |
| c. Evaluate case for Settlement/ADR on | <u>Unknown</u> |
| d. Settlement probability: | <u>Unknown</u> |
| 7. TRIAL AND PREPARATION FOR TRIAL: <i>Specify # of days for Bench or Jury trial as appropriate. Shaded areas will be completed by the court.</i> | |

- a. Rule 26(a)(3) Pretrial Disclosures

10/26/2007

Plaintiff

Defendant

- b. Objections to Rule 26(a)(3) Disclosures
(if different than 14 days provided in Rule)

DATE

10/16/2007

- c. Special Attorney Conference on or before

- d. Settlement Conference on or before

- e. Final Pretrial Conference

10/30/2007 @ 3:00 pm

- f. Trial

Length

Time

Date

- i. Bench Trial

- ii. Jury Trial

4 days

830 a.m.

11/26/2007

8. OTHER MATTERS:

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

Dated this 18 day of Sept, 2006

BY THE COURT:

Lena Campbell

FILED
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

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ADRIANUS J. GRANDJEAN,)	
)	
Petitioner,)	Case No. 2:05-CV-808 TS
)	
v.)	District Judge Ted Stewart
)	
SALT LAKE COUNTY JAIL et al.,)	ORDER
)	
Respondents.)	Magistrate Judge Samuel Alba

Petitioner, Adrianus Grandjean, filed a habeas corpus petition. He contests his probation revocation proceedings. The Court denies the petition.

BACKGROUND

Petitioner was convicted in state court of obstruction of justice. He was given a zero-to-fifteen year sentence, which was suspended, and he was placed on probation. At a probation revocation hearing on August 29, 2005, the court revoked Petitioner's probation and ordered him to spend a year in jail. Petitioner did not attack this order on appeal or through state post-conviction proceedings.

Petitioner now poses these challenges to his probation revocation hearing: (1) his attorney was ineffective in making his guilty plea for him, intimidating him, and failing to defend him by, for instance, not presenting reference letters for

Petitioner; (2) some of the probation requirements allegedly breached were not in his original probation agreement; and (3) he should have been given ninety days in jail, instead of one year.

ANALYSIS

The State responds, arguing that Petitioner's issues are unexhausted. The Court agrees with the State.

"A habeas petitioner is generally required to exhaust state remedies whether his action is brought under § 2241 or § 2254." *Montez v. McKinna*, 208 F.3d 862, 866 (10th Cir. 2000); see 28 U.S.C.S. § 2254(b) & (c) (2006). To exhaust his remedies, Petitioner must properly raise to the highest Utah court the federal constitutional issues on which he seeks relief. See *Picard v. Connor*, 404 U.S. 270, 275, 276, 92 S. Ct. 509, 512-13 (1971); *Knapp v. Henderson*, No. 97-1188, 1998 WL 778774, at *2-3 (10th Cir. Nov. 9, 1998). Petitioner maintains he never raised his claims in state court; his claims are thus unexhausted.

This Court has two options when a petition asserts only unexhausted claims. *Moore v. Schoeman*, 288 F.3d 1231, 1232 (10th Cir. 2002) (citing 28 U.S.C.S. § 2254(b)(1)(A) (2006)). "First, it may dismiss the petition and allow the petitioner to return to state court to exhaust his claims. Second, it may deny the petition on the merits, notwithstanding the petitioner's failure

to exhaust his state court remedies."¹ *Id.* (emphasis added) (citing *Rose v. Lundy*, 455 U.S. 509, 510, 102 S. Ct. 1198, 1199 (1982); 28 U.S.C.S. § 2254(b)(2) (2006)); see also *Montez*, 208 F.3d at 866 (following policy of § 2254(b)(2) in § 2241 cases).

Section 2254(b) "'does not contain the standard for determining when a court should dismiss a petition on the merits instead of insisting on complete exhaustion.'" *Id.* at 1234 (quoting *Hoxsie v. Kerby*, 108 F.3d 1239, 1243 (10th Cir. 1997)). That section should therefore be read together with *Granberry v. Greer*, 481 U.S. 129, 107 S. Ct. 1671 (1987), which held that, if a court is satisfied that a habeas petition lacks merit, use of the exhaustion rule to dismiss the petition may merely result in futile state court litigation. See *Moore*, 288 F.3d at 1234 (citing *Hoxsie*, 108 F.3d at 1243; *Granberry*, 481 U.S. at 133). The Tenth Circuit has "observed that *Lambrix v. Singletary*, 520 U.S. 518, 524 (1997), suggests that in the interest of judicial economy, a court should deny a habeas petition that is *easily resolvable* against the petitioner on the merits rather than require complete exhaustion." *Rudolph v. Galetka*, No. 99-4207, 2000 WL 33407004, at *3 (D. Utah May 23, 2000). Other courts

¹"As indicated by Congress' use of the word 'may,' the court has discretion whether to dismiss without prejudice or deny the petition on the merits under such circumstances." *Hamill v. Ferguson*, 937 F. Supp. 1517, 1522 n.1 (D. Wyo. 1996).

have described the dismissal of a petition on the basis of exhaustion rather than the merits as warranted when the petition "does not obviously lack merit," *Mercadel v. Cain*, 179 F.3d 271, 276 (5th Cir. 1999), or is not "patently frivolous," *Goines v. Walker*, 54 F. Supp. 2d 153, 155 (E.D.N.Y. 1999).

Considering the grounds for habeas relief raised here against the backdrop of § 2254(b)(2), the Court declines to use its discretion to dismiss this petition on the merits. See *Rudolph*, 2000 WL 33407004, at *3. First, it is not readily apparent to the Court that Petitioner has wholly failed to raise a "colorable federal claim[]."² See *id.* The Court therefore cannot say that Petitioner's claims obviously have no merit or are patently frivolous. See *id.*; *Mercadel*, 179 F.3d at 276; *Goines*, 54 F. Supp. 2d at 155. Moreover, resolution of Petitioner's claims would entail a review of trial court records. See *Rudolph*, 2000 WL 33407004, at *3.

Accordingly, "the claims are not 'easily resolvable' against the petitioner." *Id.* (citing *Cowans v. Artuz*, 14 F. Supp. 2d 503, 507 (S.D.N.Y. 1998) (dismissing petition for failure to

²When dismissing an unexhausted petition on the merits under § 2254(b)(2), "it is the entire petition, rather than individual claims, that must be dismissed." *Moore v. Schoeman*, 288 F.3d 1231, 1234 (10th Cir. 2002). To dismiss this petition on the merits, then, this Court must be convinced that not one of Petitioner's claims is "colorable."

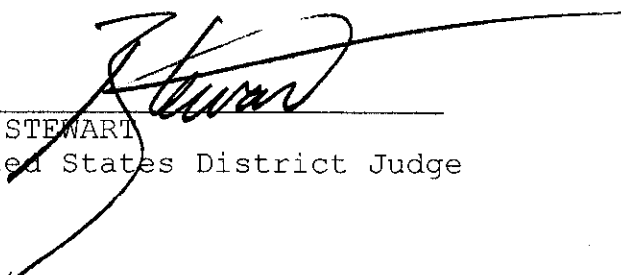
exhaust when claims could not be resolved "without reviewing virtually the entire trial and appellate record")); *Gaylor v. Harrelson*, 962 F. Supp. 1498, 1501 (N.D. Ga. 1997) (dismissing without prejudice when petitioner raised ineffective-assistance-of-counsel claim). And, "it is appropriate that [P]etitioner's . . . claim[s] be heard by a . . . [s]tate court before this Court passes on [them]." *Goines*, 54 F. Supp. 2d at 157.

CONCLUSION

IT IS THEREFORE ORDERED that Petitioner's habeas corpus petition is denied.

DATED this 14th day of September, 2006.

BY THE COURT:



TED STEWART
United States District Judge

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2006
OFFICE OF U.S. DISTRICT JUDGE
BRUCE S. JENKINS

IN THE UNITED STATES DISTRICT COURT, DISTRICT OF UTAH
CENTRAL DIVISION

CANDACE FORD and CANDACE FORD as
personal representative of the estate of
DAVID FORD

Plaintiffs,

v.

WELLS FARGO FINANCIAL UTAH, INC.

Defendant.

ORDER GRANTING PLAINTIFF'S
MOTION TO EXTEND TIME TO
RESPOND TO DEFENDANT'S MOTION
TO COMPEL ARBITRATION

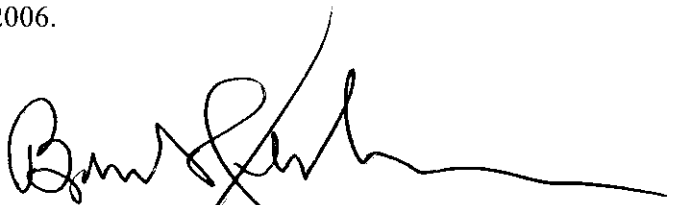
Case No. 2:05-cv-01042

Judge Bruce S. Jenkins

Magistrate Judge

UPON CONSIDERATION of the Plaintiff's motion to extend the time for the filing of their memorandum responding to Defendant's motion to compel arbitration, and good cause appearing for that extension, it is hereby **ORDERED** that the motion to extend the time to file plaintiff's memorandum responding to defendant's motion to compel arbitration is **GRANTED**. It is further ordered that Plaintiffs filing of their memorandum on August 18, 2006 is deemed good and sufficient.

So ordered this 15 day of September, 2006.


The Honorable Bruce S. Jenkins
United States District Judge

IN THE UNITED STATES DISTRICT COURT, DISTRICT OF UTAH
CENTRAL DIVISION

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2006 SEP 18 P 2:13:5 2006

OFFICE OF THE DISTRICT JUDGE
BRUCE S. JENKINS

CANDACE FORD and CANDACE FORD as
personal representative of the estate of
DAVID FORD

Plaintiffs,

v.

WELLS FARGO FINANCIAL UTAH, INC.

Defendant.

ORDER GRANTING PLAINTIFF'S
MOTION FOR FILING OF OVERLENGTH
MEMORANDUM RESPONDING TO
DEFENDANT'S MOTION TO COMPEL
ARBITRATION


Case No. 2:05-cv-01042

Judge Bruce S. Jenkins

Magistrate Judge

UPON CONSIDERATION of the Plaintiffs' motion to file a lengthy memorandum responding to Defendant's motion to compel arbitration, and good cause appearing for that lengthy memorandum, it is hereby **ORDERED** that the motion to file a lengthy memorandum containing 43 pages of argument responding to defendant's motion to compel arbitration is **GRANTED**.

So ordered this 15 day of September, 2006.


The Honorable Bruce S. Jenkins
United States District Judge

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

RYAN JAMES FISHER,

Defendant.

ORDER TO CONTINUE SENTENCING

Case No. 2:06CR80 PGC

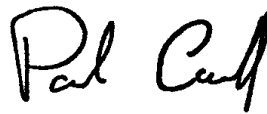
Honorable Paul G. Cassell

Based upon the motion by defendant, Ryan James Fisher, stipulation of the Government and the United States Probation Office, and good cause appearing;

IT IS HEREBY ORDERED that the sentencing hearing scheduled for September 21, 2006, in the above-entitled matter is continued to the 2nd day of November, 2006, at 3:00 p.m.

SIGNED BY MY HAND this 18th day of September, 2006.

BY THE COURT:



HONORABLE PAUL G. CASSELL
United States District Court Judge

MANNY GARCIA, #3799
Attorney for Defendant Alvarez
150 South 600 East #5-C
Salt Lake City, Utah 84102
Telephone: (801) 322-1616
Fax: (801) 322-1628

IN THE UNITED STATES DISTRICT COURT,
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,	:	ORDER TO EXTEND MOTION DATE AND
	:	TO CONTINUE THE TRIAL
vs.	:	
	:	Case no.2:06-CR-00358 DAK
	:	
RUDY DE LOS SANTOS ACOSTA,	:	Judge DALE A. KIMBALL
	:	
Defendant.	:	

This matter coming before the court on motion of the
defendant, and for good cause appearing;

IT IS HEREBY ORDERED

1. That the motion cut-off date in this case be extended from
September 15th, 2006, until the 20th day of October, 2006.


2. That the trial in this case be continued from October 23rd,
2006 until the 12th day of December, 2006, at the hour of 8:30 a.m.

3. The Court further finds that the time between October
23rd, 2006, and the new trial date is excluded from the time
calculation under the Speedy Trial Act. The Court further finds
that the ends of justice are served by taking this action and
taking this additional time and this outweighs the public interest
in a speedy trial pursuant to 18 U.S.C. Section 3161 (h) (A).

Furthermore, it is in the interests of justice to grant Defendant's motion.

Dated this 18th day of September, 2006.

BY THE COURT:

A handwritten signature in black ink, reading "Dale A. Kimball". The signature is written in a cursive, flowing style. The first name "Dale" is prominent, followed by a middle initial "A." and the last name "Kimball".

DISTRICT COURT JUDGE

FILED
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

2006 SEP 15 P 5:10

DISTRICT OF UTAH

FILED
CLERK

UNITED STATES OF AMERICA,	:	2:06 CR 00402 DB
Plaintiff,	:	ORDER SETTING STATUS
vs.	:	CONFERENCE AND EXCLUDING
CARLOS MEJIA-GUZMAN, et al,	:	TIME FROM SPEEDY TRIAL ACT
Defendants.	:	COMPUTATION
		Chief Magistrate Judge Samuel Alba

This matter came before the Court on August 17, 2006, for a status conference. The defendants were represented by counsel. The United States was represented by Assistant United States Attorney Robert A. Lund.

The Court heard discussion regarding the nature of the case and status of the case, and being now fully advised, the Court hereby enters the following ORDER:

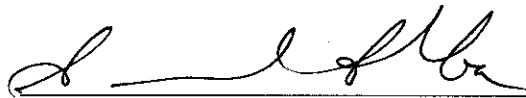
The court will hold a status conference on September 21, 2006 at 9:30 a.m. in order to set a trial date, a motion cut-off date, and other necessary deadlines.

It is further ORDERED pursuant to 18 U.S.C. § 3161(h)(1)(F) and (8)(A) and (B)(ii) that all time between June 14, 2006 and September 21, 2006, shall be excluded from computation of time under the Speedy Trial Act.

The Court finds that such time is excluded from computation under the terms of the Speedy Trial Act, and finds further that the ends of justice served by the continuance outweigh

the best interests of the public and the defendants in a speedy trial based on the number of defendants and the fact that the nature of the prosecution is unusual and complex to a degree that it would be unreasonable to expect adequate trial preparation within the time limits established by the Speedy Trial Act.

DATED this 15th day of September, 2006.

A handwritten signature in black ink, appearing to read 'S. Alba', written over a horizontal line.

SAMUEL ALBA
Chief United States Magistrate Judge

FILED
10 DISTRICT COURT

2006 SEP 15 P 5:10

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

RUSSELL PIKYAVIT,

Defendant.

**ORDER FOR
ISSUANCE OF SUBPOENA**

Case No. 2:06 CR 00407 PGC

Chief Magistrate Judge David Sam

Based upon the foregoing Motion by Defendant and good cause appearing;

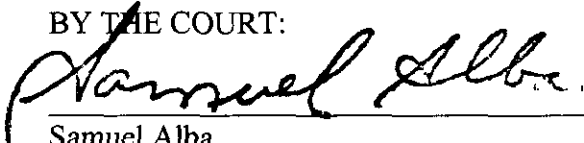
IT IS HEREBY ORDERED that a subpoena be issued to the individuals named below, to appear for the Motion to Suppress Hearing scheduled September 13, 2006 at 9:00 a.m. before Judge Paul G. Cassell:

Deputy Richard Jacobson (1P39)
Millard County Sheriff's Office
765 South Hwy 89
Fillmore, UT 84631

It is also ordered that the costs incurred by process and fees of the witness so subpoenaed be paid by the government.

Dated this 17th day of September, 2006.

BY THE COURT:



Samuel Alba

Chief United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
Central Division for the District of Utah

Airport Consulting Services Integrated,

Plaintiff,

vs.

Premium Services Management,

Defendant.

**SCHEDULING ORDER AND
ORDER VACATING HEARING**

Case No. 2:06CV102DAK

District Judge Dale A. Kimball

Magistrate Judge Brooke C. Wells

Pursuant to Fed. R. Civ. P. 16(b), the Magistrate Judge¹ received the Attorneys' Planning Report filed by counsel. The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

IT IS ORDERED that the Initial Pretrial Hearing set for 10/11/06, at 1:30 pm is **VACATED**.

****ALL TIMES 4:30 PM UNLESS INDICATED****

- | | | |
|-----------|---|----------------------|
| 1. | PRELIMINARY MATTERS | <u>DATE</u> |
| | Nature of claim(s) and any affirmative defenses: | |
| | a. Was Rule 26(f)(1) Conference held? | <u>Yes</u> |
| | b. Has Attorney Planning Meeting Form been submitted? | <u>Yes</u> |
| | c. Was 26(a)(1) initial disclosure completed? | <u>9/19/06</u> |
|
 | | |
| 2. | DISCOVERY LIMITATIONS | <u>NUMBER</u> |
| | a. Maximum Number of Depositions by Plaintiff(s) | <u>10</u> |
| | b. Maximum Number of Depositions by Defendant(s) | <u>10</u> |
| | c. Maximum Number of Hours for Each Deposition
(unless extended by agreement of parties) | <u>7</u> |
| | d. Maximum Interrogatories by any Party to any Party | <u>25</u> |
| | e. Maximum requests for admissions by any Party to any Party | <u>25</u> |

- f. Maximum requests for production by any Party to any Party 25
DATE
3. AMENDMENT OF PLEADINGS/ADDING PARTIES²
- a. Last Day to File Motion to Amend Pleadings 5/31/07
- b. Last Day to File Motion to Add Parties 5/31/07
4. RULE 26(a)(2) REPORTS FROM EXPERTS³
- a. Plaintiff 6/15/07
- b. Defendant 7/15/07
- c. Counter Reports 8/15/07
5. OTHER DEADLINES
- a. Discovery to be completed by:
- Fact discovery 5/15/07
- Expert discovery 9/15/07
- b. *(optional)* Final date for supplementation of disclosures and discovery under Rule 26 (e)
- c. Deadline for filing dispositive or potentially dispositive motions 10/15/07
6. SETTLEMENT/ ALTERNATIVE DISPUTE RESOLUTION
- a. Referral to Court-Annexed Mediation N
- b. Referral to Court-Annexed Arbitration N
- c. Evaluate case for Settlement/ADR on 5/15/07
- d. Settlement probability:
7. TRIAL AND PREPARATION FOR TRIAL:
- a. Rule 26(a)(3) Pretrial Disclosures⁴
- Plaintiffs 1/21/08
- Defendants 2/4/08
- b. Objections to Rule 26(a)(3) Disclosures
(if different than 14 days provided in Rule)

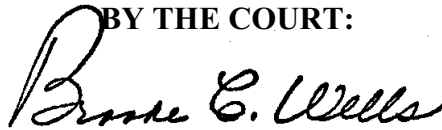
			<u>DATE</u>
c.	Special Attorney Conference ⁵ on or before		2/18/08
d.	Settlement Conference ⁶ on or before		
e.	Final Pretrial Conference	2:30 pm	3/3/08
f.	Trial	<u>Length</u>	<u>Time</u>
	i. Bench Trial	<u>3</u>	<u>3/17/08</u>
	ii. Jury Trial		

8. OTHER MATTERS:

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

Dated this 18 day of September, 2006.

BY THE COURT:



**Brooke C. Wells
U.S. Magistrate Judge**

1. The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately referred to that Magistrate Judge. A separate order may refer this case to a Magistrate Judge under DUCivR 72-2 (b) and 28 USC 636 (b)(1)(A) or DUCivR 72-2 (c) and 28 USC 636 (b)(1)(B). The name of any Magistrate Judge to whom the matter is referred under DUCivR 72-2 (b) or (c) should appear on the caption as required under DUCivR10-1(a).
2. Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).
3. A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.
4. Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.
5. The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special

equipment or courtroom arrangement requirements will be included in the pre-trial order.

6. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

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Kenneth B. Black (5588)
Jill M. Pohlman (7602)
D. Carolina Núñez (10648)
STOEL RIVES LLP
201 S Main Street, Suite 1100
Salt Lake City, UT 84111
Telephone: (801) 328-3131

Attorneys for Plaintiff
Schiff Nutrition Group, Inc.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

SCHIFF NUTRITION GROUP, INC., a
Utah corporation,

Plaintiff,

v.

AMERICAN BODY BUILDING
PRODUCTS, L.L.C., an Illinois limited
liability company,

Defendant.

~~PROPOSED~~ AMENDED SCHEDULING
ORDER

Case No. 2:06CV00162

The Honorable Tena Campbell

Pursuant to the stipulation of the parties, and good cause appearing therefore, the Court hereby ORDERS that the Scheduling Order dated April 18, 2006, is amended as follows:

1. The parties shall complete fact discovery by January 16, 2007;
2. The parties shall complete expert discovery by April 2, 2007;
3. The date for exchange of Rule 26(a)(2) expert reports shall be February 7, 2007,
and the date for exchange of expert counter reports shall be March 7, 2007;
4. The final date for supplementation of disclosures and discovery under Rule 26(e)
shall be December 15, 2006;

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U.S. DISTRICT COURT

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DISTRICT OF UTAH

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OFFICE OF
JUDGE TENA CAMPBELL

5. The final date for filing dispositive or potentially dispositive motions shall be April 10, 2007;

6. The final date for Rule 26(a)(3) Pretrial Disclosures shall be 9/21/2007;

7. The parties shall hold a Special Attorney Conference on or before 9/17/2007;

8. The Final Pretrial Conference shall be held on October 1, 2007 at 300 pm;

9. A five-day bench trial shall begin on October 22, 2007 at 830.

IT IS SO ORDERED.

DATED this 18 day of September, 2006.

Tena Campbell

The Honorable Tena Campbell
United States District Court Judge

APPROVED AS TO FORM:

/s/ Joseph J. Joyce (signed by D. Carolina Núñez, filing attorney, with permission)
Joseph J. Joyce
Attorney for Defendant

<p>UDK SOLUTIONS, INC., dba DISASTER CLEANUP, et al.,</p> <p>Plaintiffs,</p> <p>vs.</p> <p>DISASTER CLEAN-UP SERVICES, LLC., et al.,</p> <p>Defendants</p>	<p>ORDER DENYING DEFENDANTS' MOTION TO STAY DISCOVERY</p> <p>Case No. 2:06-CV-192 TS</p>
--	--

The Court finds that it is very early in this case; the fact discovery deadline does not close until March 16, 2007; the Motion for Summary Judgment is not clearly dispositive as to all claims in this case; to delay discovery pending resolution of the Motion for Summary

1

Judgment would delay discovery at least four months and would require re-scheduling almost all pretrial deadlines; there is little prejudice to Defendants in having to respond to discovery as it appears to be relevant to other issues in the case; and such delay would substantially delay this case to the prejudice of Plaintiffs but would not clearly resolve all issues in this case. It is therefore


ORDERED that Defendants' Motion to Stay Discovery (Docket No. 17) is DENIED.

It is further

ORDERED that Plaintiffs' Request for Expedited Consideration (Docket No. 19) is DENIED as MOOT.

DATED September 18, 2006.

BY THE COURT:



TED STEWART
United States District Judge

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

TRAVIS E. TELFORD,

 Petitioner,

v.

CLINT FRIEL,

 Respondent.

Case No. 2:06-CV-253 TC

ORDER DISMISSING PETITION

Mr. Travis E. Telford has filed a petition pursuant to 28 U.S.C. § 2254. He raises a number of grounds which, he contends, entitle him to relief. But because the court concludes that Mr. Telford's petition is time-barred, it does not reach the merits of his claims and dismisses his petition.

FACTUAL AND PROCEDURAL HISTORY

The State of Utah charged Mr. Telford with one count of murder, a first degree felony. A jury found Mr. Telford guilty of the charge (including a firearm enhancement). The trial court sentenced Mr. Telford to a term of imprisonment of five years to life with a five year indeterminate firearm enhancement.

Mr. Telford filed a direct appeal and on June 26, 1997, the Utah Court of Appeals affirmed the conviction. State v. Telford, 940 P.2d 522 (Utah Ct. App.1997). Mr. Telford did not file a petition for a writ of certiorari to the Utah Supreme Court.

In February of 2000, Mr. Telford filed a state petition for post-conviction relief. The district court dismissed the petition and the Utah Court of Appeals, in an unpublished opinion, affirmed the dismissal, finding that Mr. Telford's counsel was not ineffective. Telford v. State,

No. 20010759-CA, 2002 WL 44179 (Utah Ct. App. Jan. 10, 2002). Mr. Telford filed this federal petition on March 27, 2006.

ANALYSIS

Because Mr. Telford filed his federal petition on March 27, 2006, after the April 24, 1996 effective date of the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), the provisions of the Act, including the one-year limitation on filing petitions, apply. See 28 U.S.C. § 2244(d)(1).

The limitation period generally runs from the date on which the state judgment became final after direct appeal or after expiration of the time for filing an appeal. Id. The limitation period is tolled during the period a petitioner is seeking post-conviction review, but the filing of a state post-conviction petition cannot toll a limitation period that has already expired. Id.

Mr. Telford was convicted in 1995. His conviction was affirmed by the Utah Court of Appeals on June 26, 1997. Mr. Telford then had thirty days to seek certiorari review. See Utah R. of App. P. 48(a). But Mr. Telford did not file a petition for a writ of certiorari and his conviction became final on July 26, 1997, the expiration of the time for seeking certiorari review. Accordingly, unless the limitation period was tolled, the one-year limitation period imposed by the AEDPA ended in July 1998, almost seven years before Mr. Telford filed his federal petition.

The one-year limitation period may be tolled during the time a petitioner is pursuing state post-conviction relief. But tolling does not revive the federal limitation period, that is, it does not restart the federal clock at zero. See Tinker v. Moore, 255 F.3d1331, 1333 (11th Cir. 2001) (holding that a petition for state post-conviction relief, even though properly filed, did not toll

the limitation period for a federal habeas petition because the one-year period had lapsed when the state petition was filed). Accordingly, the one-year federal limitation period was not tolled during the time Mr. Telford sought state post-conviction relief.

Mr. Telford does not argue that equitable tolling is appropriate here. And, in any event, it is clear that equitable tolling is not justified in this case. The Tenth Circuit has made clear that equitable tolling is available only in “rare and exceptional circumstances.” Gibson v. Klinger, 232 F.3d 799, 808 (10th Cir. 2000) (internal quotation omitted). The court noted that “equitable tolling should not be used to thwart the intention of Congress in establishing a statute of limitations for habeas claims.” Burger v. Scott, 317 F.3d 1133, 1141 (10th Cir. 2003). The court explained that

[e]quitable tolling would be appropriate, for example, when a prisoner is actually innocent, when an adversary’s conduct—or other uncontrollable circumstances—prevents a prisoner from timely filing, or when a prisoner actively pursues judicial remedies but files a defective pleading during the statutory period. Simple excusable neglect is not sufficient.

Gibson, 232 F.3d at 808.

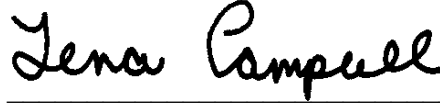
Mr. Telford waited more than seven years after his conviction became final to file his federal petition. He cannot, therefore, demonstrate that he has diligently pursued his claims. In addition, there is overwhelming evidence of his guilt in the record.

For example, Mr. Telford confessed his involvement in the murder to a police officer, giving a detailed description of the murder. In addition, Mr. Telford’s fingerprint was found at the scene of the murder. Finally, Mr. Telford admitted in a letter, written from the jail, that he had destroyed the murder weapon.

For the above reasons, Mr. Telford's petition is DISMISSED

DATED this 18th day of September, 2006.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style. The first name "Tena" is written with a large, looped 'T' and the last name "Campbell" follows in a similar cursive script.

TENA CAMPBELL
United States District Judge

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U.S. DISTRICT COURT

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DISTRICT OF UTAH

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Max D. Wheeler (A3439)
Shawn E. Draney (A4026)
Camille N. Johnson (A5494)
Judith D. Wolferts (A7023)
SNOW, CHRISTENSEN & MARTINEAU
10 Exchange Place, Eleventh Floor
Post Office Box 45000
Salt Lake City, Utah 84145
Telephone: (801) 521-9000
Attorneys for Defendants/Counterclaimant

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UTE INDIAN TRIBE OF THE UTAH
AND OURAY RESERVATION and KIRBY
ARRIVE,

Plaintiffs and Counterclaim
Defendants,

vs.

UTE DISTRIBUTION CORPORATION and
UTE DISTRIBUTION CORPORATION
BOARD OF DIRECTOR MEMBERS LOIS
LAROSE, CHARLES DENVER, LYNN
MCLURE, PALA NELSON, AND
REBECCA CURRY, in their individual and
official capacities,

Defendants, Counterclaim Plaintiff.

**ORDER GRANTING UDC'S MOTION
FOR TEN-DAY EXTENSION OF TIME
IN WHICH TO RESPOND TO
PLAINTIFFS'/COUNTERCLAIM
DEFENDANTS' MOTION TO DISMISS
COUNTERCLAIM**

Civil No. 2:06cv557

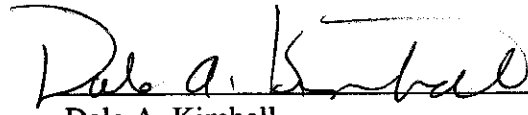
Judge Dale A. Kimball

Based on defendant/counterclaimant Ute Distribution Corporation's ("UDC") Motion for a ten (10) day extension of time in which to respond to plaintiffs'/counterclaim defendants' Motion to Dismiss Counterclaim, and for good cause appearing,

IT IS HEREBY ORDERED that the UDC's Motion is granted, and the UDC has to and through September 29, 2006 in which to file a response to plaintiffs'/counterclaim defendants' Motion to Dismiss Counterclaim.

DATED this 16th day of September, 2006.

BY THE COURT



Dale A. Kimball
District Court Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

BRIAN ROFFE, On Behalf of Himself and
All Others Similarly Situated,

Plaintiff,

vs.

NPS PHARMACEUTICALS, INC., N.
ANTHONY COLES, MORGAN R.
BROWN, JUERGEN LASOWSKI and
GERALD J. MICHEL,

Defendants.

ORDER GRANTING MOTION AND
STIPULATION TO CONSOLIDATE

Case No. 2:06cv00570

Based on the Motion and Stipulation to Consolidate Related Actions, and to Set Schedule for Filing Consolidated Complaint and Briefing Certain Motions filed by the parties in actions 2:06cv00570 PGC, 2:06cv00597 TS, 2:06cv00647 DB, 2:06cv00648 BSJ, and 2:06cv00699 TS, and good cause appearing therefor,

IT IS HEREBY ORDERED that:

1. The following actions be consolidated for all purposes, including pretrial proceedings, trial, and appeal, pursuant to Rule 42(a) of the Federal Rules of Civil Procedure and Rule 42-1 of the Rules of Practice of this District:

Abbreviated Case Name	Case No.	Date Filed
<i>Roffe v. NPS Pharmaceuticals, Inc.</i>	2:06cv00570 PGC	07/12/06
<i>Baird v. NPS Pharmaceuticals, Inc.</i>	2:06cv00597 TS	07/20/06
<i>Leventhal v. NPS Pharmaceuticals, Inc.</i>	2:06cv00647 DB	08/04/06
<i>Skubella v. NPS Pharmaceuticals, Inc.</i>	2:06cv00648 BSJ	08/04/06
<i>McCormick v. NPS Pharmaceuticals, Inc.</i>	2:06cv00699 TS	08/21/06

2. The caption of these consolidated cases shall be “*In re NPS Pharmaceuticals, Inc. Securities Litigation*” and the files of this action shall be maintained in one file under Master File No. 2:06cv00570 PGC. Any other actions now pending or hereafter filed in this District which arise out of the same facts and claims as alleged in these related actions shall be consolidated for all purposes, if and when they are brought to the court’s attention and the court accepts the transfer and approves consolidation;

3. Every pleading and other filing in the consolidated actions, or in any separate action included herein, shall bear the following caption:

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

IN RE NPS PHARMACEUTICALS, INC. SECURITIES LITIGATION,	Master File No. 2:06cv00570 PGC
This Document relates to:	(Consolidated with 2:06cv00597 TS, 2:06cv00647 DB, 2:06cv00648 BSJ and 2:06cv00699 TS)

4. When a pleading is intended to apply to all actions governed by this order, the words “All Actions” shall appear immediately after the words “This Document Relates to:” in the caption set out above. When a pleading is intended to apply only to some, but not all, of the consolidated actions, this court’s docket number for each individual action to which the paper is

intended to be applicable and the last name of the first-named plaintiff in said action shall appear immediately after the words “This Document Relates to:” in the caption described above;

5. To the extent not otherwise provided by law, upon the signing of this order, the parties shall comply with 15 U.S.C. § 78u-4(b)(3)(C), specifically, “unless otherwise ordered by the court, any party to the action with actual notice of the allegations contained in the complaint shall treat all documents, data compilations (including electronically recorded or stored data), and tangible objects that are in the custody or control of such person and that are relevant to the allegations, as if they were the subject of a continuing request for production of documents from an opposing party under the Federal Rules of Civil Procedure;”

6. Lead plaintiff shall file and serve a consolidated complaint no later than sixty (60) days after his or her appointment as lead plaintiff which shall be the operative complaint in the consolidated action and which shall supersede any other complaints filed in and/or transferred to this court. The defendants shall not be required to answer or otherwise respond to, and are hereby expressly relieved from answering or otherwise responding to, each of the individual complaints in the above-captioned actions;

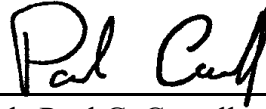
7. Defendants shall have sixty (60) days after filing and service of the consolidated complaint to answer or otherwise respond to the consolidated complaint;

8. If defendants move to dismiss the consolidated complaint, lead plaintiff’s opposition papers shall be filed within sixty (60) days of filing and service of the motion to dismiss; and

9. Defendants' reply papers shall be filed within forty-five (45) days of service of lead plaintiff's opposition papers.

Dated this 14th day of September, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Paul Cassell", is written over a horizontal line.

Honorable Paul G. Cassell
United States District Court Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

ROFFE,

Plaintiffs,

vs.

NPS PHARMACEUTICALS, INC., et al.,

Defendants.

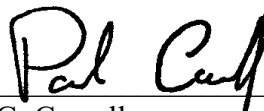
ORDER OF REFERENCE

Civil No. 2:06-CV-00570 PGC

IT IS ORDERED that, as authorized by 28 U.S.C. § 636(b)(1)(A) and the rules of this Court, the above entitled case is referred to Magistrate Judge Paul Warner. The magistrate judge is directed to hear and determine any nondispositive pretrial matters pending before the Court.

DATED this 15th day of September, 2006.

BY THE COURT:



Paul G. Cassell
United States District Judge

BRIDGET K. ROMANO - 6979
Assistant Utah Attorney General
MARK L. SHURTLEFF - 4666
Utah Attorney General
160 East 300 South, Sixth Floor
P.O. Box 140856
Salt Lake City, Utah 84114-0856
Telephone (801) 366-0100
bromano@utah.gov

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

VIVIAN KOSAN,

Plaintiff,

vs.

UTAH DEPARTMENT OF
CORRECTIONS, MIKE CHABRIES,
SCOTT CARVER, et al.

Defendant.

**SCHEDULING ORDER AND
ORDER VACATING HEARING**

Case No. 2:06cv00592

District Judge: Paul G. Cassell

Magistrate Judge: Brooke Wells

Pursuant to Fed.R. Civ P. 16(b), the Magistrate Judge¹ received the Attorneys' Planning Report filed by counsel. The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

IT IS ORDERED that the Initial Pretrial Hearing set for October 11, 2006 at 2:30 p.m. is VACATED.

****ALL TIMES 4:30 PM UNLESS INDICATED****

1. PRELIMINARY MATTERS

DATE

Nature of claim(s) and any affirmative defenses:

- | | | |
|----|--|-----------------|
| a. | Was Rule 26(f)(1) Conference held? | <u>09/08/06</u> |
| b. | Has Attorney Planning Meeting Form been submitted? | <u>09/11/06</u> |
| c. | Was 26(a)(1) initial disclosure completed? | <u>10/15/06</u> |

2.	DISCOVERY LIMITATIONS	<u>NUMBER</u>
-----------	------------------------------	----------------------

- | | | |
|----|--|-----------|
| a. | Maximum Number of Depositions by Plaintiff(s) | <u>10</u> |
| b. | Maximum Number of Depositions by Defendant(s) | <u>10</u> |
| c. | Maximum Number of Hours for Each Deposition
(unless extended by agreement of parties) | <u>8</u> |
| d. | Maximum Interrogatories by any Party to any Party | <u>30</u> |
| e. | Maximum requests for admissions by any Party to any Party | <u>30</u> |
| f. | Maximum requests for production by any Party to any Party | <u>30</u> |

DATE

3.	AMENDMENT OF PLEADINGS/ADDING PARTIES²
-----------	--

- | | | |
|----|--|-----------------|
| a. | Last Day to File Motion to Amend Pleadings | <u>01/02/07</u> |
| b. | Last Day to File Motion to Add Parties | <u>01/02/07</u> |

4.	RULE 26(a)(2) REPORTS FROM EXPERTS³
-----------	---

- | | | |
|----|-----------------|-------------------------------|
| a. | Plaintiff | <u>04/15/07</u> |
| b. | Defendant | <u>04/30/07</u> |
| c. | Counter reports | <u>w/in 30</u>
<u>days</u> |

5.	OTHER DEADLINES
-----------	------------------------

- | | | |
|----|-------------------------------|-----------------|
| a. | Discovery to be completed by: | |
| | Fact discovery | <u>03/01/07</u> |
| | Expert discovery | <u>05/15/07</u> |

- b. Final date for supplementation of disclosures and discovery under Rule 26 (e) 03/01/07
- c. Deadline for filing dispositive or potentially dispositive motions 06/30/07

6. SETTLEMENT/ ALTERNATIVE DISPUTE RESOLUTION

- a. Referral to Court-Annexed Mediation No
- b. Referral to Court-Annexed Arbitration No
- c. Evaluate case for Settlement/ADR on 03/01/07
- d. Settlement probability:

7. TRIAL AND PREPARATION FOR TRIAL:

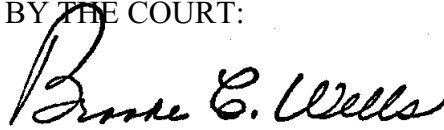
- a. Rule 26(a)(3) Pretrial Disclosures⁴
- | | | | |
|-----------|--|--|-----------------|
| Plaintiff | | | 10/02/07 |
| Defendant | | | 10/16/07 |
- b. Objections to Rule 26(a)(3) Disclosures
(if different than 14 days provided in Rule)
- c. Special Attorney Conference⁵ on or before **10/30/07**
- d. Settlement Conference⁶ on or before
- e. Final Pretrial Conference 3:00 pm **11/13/07**
- | f. Trial | <u>Length</u> | <u>Time</u> | <u>Date</u> |
|----------------|---------------|----------------|-----------------|
| I. Bench Trial | <u># days</u> | | |
| ii. Jury Trial | <u>5 days</u> | <u>8:00 am</u> | <u>11/26/07</u> |

8. OTHER MATTERS:

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

Dated this 18 day of September , 20 06 .

BY THE COURT:



Brooke Wells
U.S. Magistrate Judge

1. The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately referred to that Magistrate Judge. A separate order may refer this case to a Magistrate Judge under DUCivR 72-2 (b) and 28 USC 636 (b)(1)(A) or DUCivR 72-2 (c) and 28 USC 636 (b)(1)(B). The name of any Magistrate Judge to whom the matter is referred under DUCivR 72-2 (b) or (c) should appear on the caption as required under DUCivR10-1(a).
2. Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).
3. A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.
4. Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.
5. The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.
6. The Settlement Conference does not involve the Court unless a separate order is entered. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

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IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

BRIAN ROFFE, On Behalf of Himself and
All Others Similarly Situated,

Plaintiff,

vs.

NPS PHARMACEUTICALS, INC., N.
ANTHONY COLES, MORGAN R.
BROWN, JUERGEN LASOWSKI and
GERALD J. MICHEL,

Defendants.

ORDER GRANTING MOTION AND
STIPULATION TO CONSOLIDATE

Case No. 2:06cv00570

Based on the Motion and Stipulation to Consolidate Related Actions, and to Set Schedule for Filing Consolidated Complaint and Briefing Certain Motions filed by the parties in actions 2:06cv00570 PGC, 2:06cv00597 TS, 2:06cv00647 DB, 2:06cv00648 BSJ, and 2:06cv00699 TS, and good cause appearing therefor,

IT IS HEREBY ORDERED that:

1. The following actions be consolidated for all purposes, including pretrial proceedings, trial, and appeal, pursuant to Rule 42(a) of the Federal Rules of Civil Procedure and Rule 42-1 of the Rules of Practice of this District:

Abbreviated Case Name	Case No.	Date Filed
<i>Roffe v. NPS Pharmaceuticals, Inc.</i>	2:06cv00570 PGC	07/12/06
<i>Baird v. NPS Pharmaceuticals, Inc.</i>	2:06cv00597 TS	07/20/06
<i>Leventhal v. NPS Pharmaceuticals, Inc.</i>	2:06cv00647 DB	08/04/06
<i>Skubella v. NPS Pharmaceuticals, Inc.</i>	2:06cv00648 BSJ	08/04/06
<i>McCormick v. NPS Pharmaceuticals, Inc.</i>	2:06cv00699 TS	08/21/06

2. The caption of these consolidated cases shall be “*In re NPS Pharmaceuticals, Inc. Securities Litigation*” and the files of this action shall be maintained in one file under Master File No. 2:06cv00570 PGC. Any other actions now pending or hereafter filed in this District which arise out of the same facts and claims as alleged in these related actions shall be consolidated for all purposes, if and when they are brought to the court’s attention and the court accepts the transfer and approves consolidation;

3. Every pleading and other filing in the consolidated actions, or in any separate action included herein, shall bear the following caption:

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

IN RE NPS PHARMACEUTICALS, INC. SECURITIES LITIGATION,	Master File No. 2:06cv00570 PGC
This Document relates to:	(Consolidated with 2:06cv00597 TS, 2:06cv00647 DB, 2:06cv00648 BSJ and 2:06cv00699 TS)

4. When a pleading is intended to apply to all actions governed by this order, the words “All Actions” shall appear immediately after the words “This Document Relates to:” in the caption set out above. When a pleading is intended to apply only to some, but not all, of the consolidated actions, this court’s docket number for each individual action to which the paper is

intended to be applicable and the last name of the first-named plaintiff in said action shall appear immediately after the words “This Document Relates to:” in the caption described above;

5. To the extent not otherwise provided by law, upon the signing of this order, the parties shall comply with 15 U.S.C. § 78u-4(b)(3)(C), specifically, “unless otherwise ordered by the court, any party to the action with actual notice of the allegations contained in the complaint shall treat all documents, data compilations (including electronically recorded or stored data), and tangible objects that are in the custody or control of such person and that are relevant to the allegations, as if they were the subject of a continuing request for production of documents from an opposing party under the Federal Rules of Civil Procedure;”

6. Lead plaintiff shall file and serve a consolidated complaint no later than sixty (60) days after his or her appointment as lead plaintiff which shall be the operative complaint in the consolidated action and which shall supersede any other complaints filed in and/or transferred to this court. The defendants shall not be required to answer or otherwise respond to, and are hereby expressly relieved from answering or otherwise responding to, each of the individual complaints in the above-captioned actions;

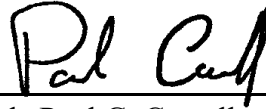
7. Defendants shall have sixty (60) days after filing and service of the consolidated complaint to answer or otherwise respond to the consolidated complaint;

8. If defendants move to dismiss the consolidated complaint, lead plaintiff’s opposition papers shall be filed within sixty (60) days of filing and service of the motion to dismiss; and

9. Defendants' reply papers shall be filed within forty-five (45) days of service of lead plaintiff's opposition papers.

Dated this 14th day of September, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Paul Cassell", is written over a horizontal line.

Honorable Paul G. Cassell
United States District Court Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

BRIAN ROFFE, On Behalf of Himself and
All Others Similarly Situated,

Plaintiff,

vs.

NPS PHARMACEUTICALS, INC., N.
ANTHONY COLES, MORGAN R.
BROWN, JUERGEN LASOWSKI and
GERALD J. MICHEL,

Defendants.

ORDER GRANTING MOTION AND
STIPULATION TO CONSOLIDATE

Case No. 2:06cv00570

Based on the Motion and Stipulation to Consolidate Related Actions, and to Set Schedule for Filing Consolidated Complaint and Briefing Certain Motions filed by the parties in actions 2:06cv00570 PGC, 2:06cv00597 TS, 2:06cv00647 DB, 2:06cv00648 BSJ, and 2:06cv00699 TS, and good cause appearing therefor,

IT IS HEREBY ORDERED that:

1. The following actions be consolidated for all purposes, including pretrial proceedings, trial, and appeal, pursuant to Rule 42(a) of the Federal Rules of Civil Procedure and Rule 42-1 of the Rules of Practice of this District:

Abbreviated Case Name	Case No.	Date Filed
<i>Roffe v. NPS Pharmaceuticals, Inc.</i>	2:06cv00570 PGC	07/12/06
<i>Baird v. NPS Pharmaceuticals, Inc.</i>	2:06cv00597 TS	07/20/06
<i>Leventhal v. NPS Pharmaceuticals, Inc.</i>	2:06cv00647 DB	08/04/06
<i>Skubella v. NPS Pharmaceuticals, Inc.</i>	2:06cv00648 BSJ	08/04/06
<i>McCormick v. NPS Pharmaceuticals, Inc.</i>	2:06cv00699 TS	08/21/06

2. The caption of these consolidated cases shall be “*In re NPS Pharmaceuticals, Inc. Securities Litigation*” and the files of this action shall be maintained in one file under Master File No. 2:06cv00570 PGC. Any other actions now pending or hereafter filed in this District which arise out of the same facts and claims as alleged in these related actions shall be consolidated for all purposes, if and when they are brought to the court’s attention and the court accepts the transfer and approves consolidation;

3. Every pleading and other filing in the consolidated actions, or in any separate action included herein, shall bear the following caption:

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

IN RE NPS PHARMACEUTICALS, INC. SECURITIES LITIGATION,	Master File No. 2:06cv00570 PGC
This Document relates to:	(Consolidated with 2:06cv00597 TS, 2:06cv00647 DB, 2:06cv00648 BSJ and 2:06cv00699 TS)

4. When a pleading is intended to apply to all actions governed by this order, the words “All Actions” shall appear immediately after the words “This Document Relates to:” in the caption set out above. When a pleading is intended to apply only to some, but not all, of the consolidated actions, this court’s docket number for each individual action to which the paper is

intended to be applicable and the last name of the first-named plaintiff in said action shall appear immediately after the words “This Document Relates to:” in the caption described above;

5. To the extent not otherwise provided by law, upon the signing of this order, the parties shall comply with 15 U.S.C. § 78u-4(b)(3)(C), specifically, “unless otherwise ordered by the court, any party to the action with actual notice of the allegations contained in the complaint shall treat all documents, data compilations (including electronically recorded or stored data), and tangible objects that are in the custody or control of such person and that are relevant to the allegations, as if they were the subject of a continuing request for production of documents from an opposing party under the Federal Rules of Civil Procedure;”

6. Lead plaintiff shall file and serve a consolidated complaint no later than sixty (60) days after his or her appointment as lead plaintiff which shall be the operative complaint in the consolidated action and which shall supersede any other complaints filed in and/or transferred to this court. The defendants shall not be required to answer or otherwise respond to, and are hereby expressly relieved from answering or otherwise responding to, each of the individual complaints in the above-captioned actions;

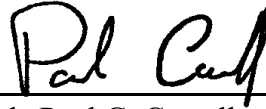
7. Defendants shall have sixty (60) days after filing and service of the consolidated complaint to answer or otherwise respond to the consolidated complaint;

8. If defendants move to dismiss the consolidated complaint, lead plaintiff’s opposition papers shall be filed within sixty (60) days of filing and service of the motion to dismiss; and

9. Defendants' reply papers shall be filed within forty-five (45) days of service of lead plaintiff's opposition papers.

Dated this 14th day of September, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Paul Cassell", is written over a horizontal line.

Honorable Paul G. Cassell
United States District Court Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

BRIAN ROFFE, On Behalf of Himself and
All Others Similarly Situated,

Plaintiff,

vs.

NPS PHARMACEUTICALS, INC., N.
ANTHONY COLES, MORGAN R.
BROWN, JUERGEN LASOWSKI and
GERALD J. MICHEL,

Defendants.

ORDER GRANTING MOTION AND
STIPULATION TO CONSOLIDATE

Case No. 2:06cv00570

Based on the Motion and Stipulation to Consolidate Related Actions, and to Set Schedule for Filing Consolidated Complaint and Briefing Certain Motions filed by the parties in actions 2:06cv00570 PGC, 2:06cv00597 TS, 2:06cv00647 DB, 2:06cv00648 BSJ, and 2:06cv00699 TS, and good cause appearing therefor,

IT IS HEREBY ORDERED that:

1. The following actions be consolidated for all purposes, including pretrial proceedings, trial, and appeal, pursuant to Rule 42(a) of the Federal Rules of Civil Procedure and Rule 42-1 of the Rules of Practice of this District:

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2. The caption of these consolidated cases shall be “*In re NPS Pharmaceuticals, Inc. Securities Litigation*” and the files of this action shall be maintained in one file under Master File No. 2:06cv00570 PGC. Any other actions now pending or hereafter filed in this District which arise out of the same facts and claims as alleged in these related actions shall be consolidated for all purposes, if and when they are brought to the court’s attention and the court accepts the transfer and approves consolidation;

3. Every pleading and other filing in the consolidated actions, or in any separate action included herein, shall bear the following caption:

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

IN RE NPS PHARMACEUTICALS, INC. SECURITIES LITIGATION,	Master File No. 2:06cv00570 PGC
This Document relates to:	(Consolidated with 2:06cv00597 TS, 2:06cv00647 DB, 2:06cv00648 BSJ and 2:06cv00699 TS)

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intended to be applicable and the last name of the first-named plaintiff in said action shall appear immediately after the words “This Document Relates to:” in the caption described above;

5. To the extent not otherwise provided by law, upon the signing of this order, the parties shall comply with 15 U.S.C. § 78u-4(b)(3)(C), specifically, “unless otherwise ordered by the court, any party to the action with actual notice of the allegations contained in the complaint shall treat all documents, data compilations (including electronically recorded or stored data), and tangible objects that are in the custody or control of such person and that are relevant to the allegations, as if they were the subject of a continuing request for production of documents from an opposing party under the Federal Rules of Civil Procedure;”

6. Lead plaintiff shall file and serve a consolidated complaint no later than sixty (60) days after his or her appointment as lead plaintiff which shall be the operative complaint in the consolidated action and which shall supersede any other complaints filed in and/or transferred to this court. The defendants shall not be required to answer or otherwise respond to, and are hereby expressly relieved from answering or otherwise responding to, each of the individual complaints in the above-captioned actions;

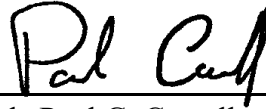
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9. Defendants' reply papers shall be filed within forty-five (45) days of service of lead plaintiff's opposition papers.

Dated this 14th day of September, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Paul Cassell", is written over a horizontal line.

Honorable Paul G. Cassell
United States District Court Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

2006 SEP 18 A 9:55

CLERK

RECEIVED

NATURE'S WAY PRODUCTS, INC.,

Plaintiff,

vs.

ZILA NUTRACEUTICALS, INC.,

Defendant.

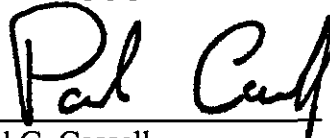
ORDER GRANTING EXTENSION
OF TIME FOR PLAINTIFF TO FILE
OPPOSITION TO DEFENDANT'S
MOTION TO STAY

Case No. 2:06-cv-00667

The court has considered and reviewed the Stipulated Motion for an Extension of Time for Defendant to File Its Reply Memorandum in Support of Its Motion to Stay. For good cause appearing, the court grants the defendant an extension of time in which to file its reply. Accordingly, the court GRANTS the stipulated motion [#18]; the defendant's reply is now due on or before September 25, 2006.

DATED this 15th day of September, 2006.

BY THE COURT:



Paul G. Cassell
United States District Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

BRIAN ROFFE, On Behalf of Himself and
All Others Similarly Situated,

Plaintiff,

vs.

NPS PHARMACEUTICALS, INC., N.
ANTHONY COLES, MORGAN R.
BROWN, JUERGEN LASOWSKI and
GERALD J. MICHEL,

Defendants.

ORDER GRANTING MOTION AND
STIPULATION TO CONSOLIDATE

Case No. 2:06cv00570

Based on the Motion and Stipulation to Consolidate Related Actions, and to Set Schedule for Filing Consolidated Complaint and Briefing Certain Motions filed by the parties in actions 2:06cv00570 PGC, 2:06cv00597 TS, 2:06cv00647 DB, 2:06cv00648 BSJ, and 2:06cv00699 TS, and good cause appearing therefor,

IT IS HEREBY ORDERED that:

1. The following actions be consolidated for all purposes, including pretrial proceedings, trial, and appeal, pursuant to Rule 42(a) of the Federal Rules of Civil Procedure and Rule 42-1 of the Rules of Practice of this District:

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2. The caption of these consolidated cases shall be “*In re NPS Pharmaceuticals, Inc. Securities Litigation*” and the files of this action shall be maintained in one file under Master File No. 2:06cv00570 PGC. Any other actions now pending or hereafter filed in this District which arise out of the same facts and claims as alleged in these related actions shall be consolidated for all purposes, if and when they are brought to the court’s attention and the court accepts the transfer and approves consolidation;

3. Every pleading and other filing in the consolidated actions, or in any separate action included herein, shall bear the following caption:

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

IN RE NPS PHARMACEUTICALS, INC. SECURITIES LITIGATION,	Master File No. 2:06cv00570 PGC
This Document relates to:	(Consolidated with 2:06cv00597 TS, 2:06cv00647 DB, 2:06cv00648 BSJ and 2:06cv00699 TS)

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intended to be applicable and the last name of the first-named plaintiff in said action shall appear immediately after the words “This Document Relates to:” in the caption described above;

5. To the extent not otherwise provided by law, upon the signing of this order, the parties shall comply with 15 U.S.C. § 78u-4(b)(3)(C), specifically, “unless otherwise ordered by the court, any party to the action with actual notice of the allegations contained in the complaint shall treat all documents, data compilations (including electronically recorded or stored data), and tangible objects that are in the custody or control of such person and that are relevant to the allegations, as if they were the subject of a continuing request for production of documents from an opposing party under the Federal Rules of Civil Procedure;”

6. Lead plaintiff shall file and serve a consolidated complaint no later than sixty (60) days after his or her appointment as lead plaintiff which shall be the operative complaint in the consolidated action and which shall supersede any other complaints filed in and/or transferred to this court. The defendants shall not be required to answer or otherwise respond to, and are hereby expressly relieved from answering or otherwise responding to, each of the individual complaints in the above-captioned actions;

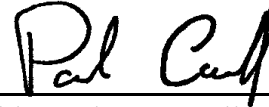
7. Defendants shall have sixty (60) days after filing and service of the consolidated complaint to answer or otherwise respond to the consolidated complaint;

8. If defendants move to dismiss the consolidated complaint, lead plaintiff’s opposition papers shall be filed within sixty (60) days of filing and service of the motion to dismiss; and

9. Defendants' reply papers shall be filed within forty-five (45) days of service of lead plaintiff's opposition papers.

Dated this 14th day of September, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Paul Cassell", is written over a horizontal line.

Honorable Paul G. Cassell
United States District Court Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

WILLIAM CHASE WOOD, et al.,
Plaintiffs,

vs.

WORLD WIDE ASSOCIATION OF
SPECIALTY PROGRAMS AND
SCHOOLS, INC., et al.,
Defendants.

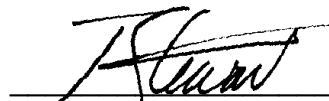
ORDER GRANTING PRO HAC
VICE ADMISSION OF WINDLE
TURLEY, LORI WATSON AND T.
NGUYEN

Case No. 2:06-CV-708 TS

It appearing to the Court that Petitioners meet the pro have vice admission requirements of D.U.Civ.R 83-1.1(d), the Motions for the Admission pro hac vice in the United States District Court, District of Utah filed by Windle Turley, Lori Watson, and T. Nguyen are GRANTED.

DATED September 18, 2006.

BY THE COURT:



TED STEWART
United States District Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

DAVID J. HESS,
Plaintiff,

vs.

UNITED STATES OF AMERICA,
Defendant.

ORDER DENYING MOTION FOR
POST-CONVICTION RELIEF

Case No. 2:06-CV-00719

David J. Hess, a *pro-se* petitioner, has filed a motion in this case which the court construes as a petition for post-conviction relief pursuant to 28 U.S.C. § 2255.

This is Mr. Hess' second attempt to obtain post-conviction relief. His first attempt, *Hess v. United States of America*, case number 2:01-cv-00704 DS, in this court, was closed on August 9, 2002. The court denied his motion for relief in that case.¹

Mr. Hess' second motion for post-conviction relief relies on different arguments. However, before the court may entertain a second motion for post-conviction relief, the defendant must comply with the applicable statutory requirements. In 28 U.S.C. § 2255, Congress set forth those requirements as follows:

¹See Docket No. 12, *Hess v. United States of America*, Case No. 2:01-cv-00704 (D. Utah filed Aug. 9. 2002).

A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain—

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.²


Mr. Hess has not provided the requisite certification from the Tenth Circuit. As such, the court may not entertain his second motion for post-conviction relief. The court notes that it has received multiple documents, via fax, that appear to be related to this case. The documents are not signed or dated, but they appear to contain the same basic arguments as those Mr. Hess presented in his motion. The court presumes the documents are from Mr. Hess, but notes that it can not accept faxed, unsigned papers as valid filings, even from *pro se* parties.

The court, therefore DENIES Mr. Hess' motion [#1], as Mr. Hess has failed to provide a certification from the Tenth Circuit which would allow the court to entertain his motion. The clerk's office is directed to close this case.

SO ORDERED.

DATED this 14th day of September, 2006.

BY THE COURT:



Paul G. Cassell
United States District Judge

²29 U.S.C. § 2255.

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

FILED
U.S. DISTRICT COURT
2006 SEP 18 P 3:17

DISTRICT OF UTAH
BY: DEPUTY CLERK

JOHN A. CAMPBELL,

Plaintiff,

vs.

MUNICIPALITY OF HACKENSAK, N.J., et
al.,

Defendants.

ORDER

Case No. 2:06 CV 770 TC

Mr. John A. Campbell has filed a lawsuit (one of several) against Hackensak, New Jersey, and its police form. His allegations seem to relate to a ticket he received in 1997 for a bicycle offense. It is, however, impossible to piece together the allegations in Mr. Campbell's complaint to understand the gist of his claims.

Accordingly, Mr. Campbell's complaint is dismissed without prejudice and he is given three weeks from the date of this order to file an amended complaint which is comprehensible.

DATED this 18th day of September, 2006.

BY THE COURT:

Tena Campbell

TENA CAMPBELL
United States District Judge

UNITED STATES DISTRICT COURT

FILED
U.S. DISTRICT COURT

2006 SEP 18 P 12: 26

Centra

District of

UTAH

It Thi Phung

Plaintiff

V.

Jo Anne Barnhart

Defendant

ORDER ON APPLICATION
TO PROCEED WITHOUT
PREPAYMENT OF FEES

Judge Bruce S. Jenkins
DECK TYPE: Civil
DATE STAMP: 09/18/2006 @ 12:31:31
CASE NUMBER: 2:06CV00788 BSJ

Having considered the application to proceed without prepayment of fees under 28 USC §1915;

IT IS ORDERED that the application is:

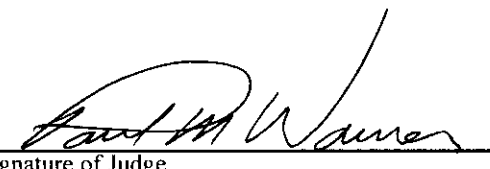
☒ GRANTED.

☒ The clerk is directed to file the complaint.

☐ IT IS FURTHER ORDERED that the clerk issue summons and the United States marshal serve a copy of the complaint, summons and this order upon the defendant(s) as directed by the plaintiff. All costs of service shall be advanced by the United States.

☐ DENIED, for the following reasons:

ENTER this 18th day of September, 2006.


Signature of Judge

Magistrate Judge Paul M. Warner
Name and Title of Judge

UNITED STATES DISTRICT COURT

Central Division

District of

FILED
U.S. DISTRICT COURT
UTAH

2006 SEP 18 P 12:25

John A. Campbell

Plaintiff

V.

Atlantic City, City of et al

Defendant

**ORDER ON APPLICATION
TO PROCEED WITHOUT
PREPAYMENT OF FEES**

Judge Bruce S. Jenkins
DECK TYPE: Civil
DATE STAMP: 09/18/2006 @ 12:32:05
CASE NUMBER: 2:06CV00789 BSJ

Having considered the application to proceed without prepayment of fees under 28 USC §1915;

IT IS ORDERED that the application is:

☒ GRANTED.

☒ The clerk is directed to file the complaint.

☐ IT IS FURTHER ORDERED that the clerk issue summons and the United States marshal serve a copy of the complaint, summons and this order upon the defendant(s) as directed by the plaintiff. All costs of service shall be advanced by the United States.

☐ DENIED, for the following reasons:

ENTER this 18th day of September, 2006.



Signature of Judge

Magistrate Judge Paul M. Warner

Name and Title of Judge

UNITED STATES DISTRICT COURT

FILED
U.S. DISTRICT COURT

Central Division

District of

UTAH
2006 SEP 18 P 12:25

John A. Campbell

Plaintiff

V.

Lakewood NJ et al

Defendant

ORDER ON APPLICATION
TO PROCEED WITHOUT
PREPAYMENT OF FEES

Judge Dale A. Kimball

DECK TYPE: Civil

DATE STAMP: 09/18/2006 @ 12:32:42

CASE NUMBER: 2:06CV00790 DAK

Having considered the application to proceed without prepayment of fees under 28 USC §1915;

IT IS ORDERED that the application is:

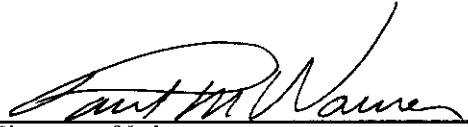
☒ GRANTED.

☒ The clerk is directed to file the complaint.

☐ IT IS FURTHER ORDERED that the clerk issue summons and the United States marshal serve a copy of the complaint, summons and this order upon the defendant(s) as directed by the plaintiff. All costs of service shall be advanced by the United States.

☐ DENIED, for the following reasons:

ENTER this 18th day of September, 2006.


Signature of Judge

Magistrate Judge Paul M. Warner
Name and Title of Judge